

1 William S. Smerdon SBN 149599  
2 HORTON, KNOX, CARTER & FOOTE  
3 895 Broadway  
4 El Centro, California 92243  
5 Telephone (760) 352-2821

6 Attorneys For Respondents  
7 IMPERIAL IRRIGATION DISTRICT and RON HULL

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF IMPERIAL**

10 **JOHN JORDAN and EMIL SCHAFFNER,**

11 **Petitioners,**

12 **v.**

13 **IMPERIAL IRRIGATION DISTRICT and RON**  
14 **HULL, manager of public affairs,**

15 **Respondents.**

16 **CASE NO. M-0106**

17 **ORDER ESTABLISHING BRIEFING**  
18 **SCHEDULE AFTER EX PARTE**  
19 **HEARING ON PETITION FOR WRIT**  
20 **OF MANDATE**

21 Petitioners' ex parte application for a writ of mandate came on for hearing in  
22 Department 1 of the above-entitled court on May 20, 2003 at 8:30 a.m., the Honorable  
23 James Harmon, Judge presiding. Petitioners appeared by counsel, Thomas Virsik,  
24 respondents appeared by counsel, Daniel McNamera. The court established a briefing  
25 schedule as follows:

26 Opposition to the Petition for Writ of Mandate to be filed and served by May 30,  
27 2003;

28 Reply to the opposition shall be filed and served by June 3, 2003; and

The hearing on the application shall be held on June 5, 2003, in Department 1

**ORDER ESTABLISHING BRIEFING SCHEDULE AFTER EX PARTE HEARING ON PETITION FOR**  
**WRIT OF MANDATE**

1 of the above-entitled court at 8:30 a.m., or as soon thereafter as the matter may be  
2 heard.

3  
4 Dated: \_\_\_\_\_

5  
6 James Harmon  
7 JUDGE OF THE SUPERIOR COURT

8 Approved as to Form:

9  
10   
11 \_\_\_\_\_  
12 Thomas S. Virsik  
13 Attorney for Petitioners 5/22/03  
14  
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23  
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25  
26  
27

28 ORDER ESTABLISHING BRIEFING SCHEDULE AFTER EX PARTE HEARING ON PETITION FOR WRIT OF MANDATE

LAW OFFICES OF  
**PATRICK J. MALONEY**

2425 WEBB AVENUE, SUITE 100  
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PATRICK J. "MIKE" MALONEY

(510) 521-4575  
FAX (510) 521-4623  
San Francisco (415) 512-040600  
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THOMAS S. VIRSIK

Via fax

May 22, 2003

William S. Smerdon  
Horton, Knox, Carter & Foote

760.352.8540

Re: Jordan v. IID

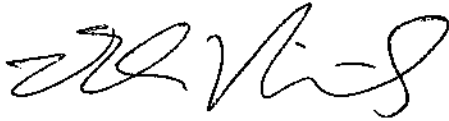
Dear Mr. Smerdon:

Enclosed please find the signed order for filing. As for the alleged ex parte communication, enclosed please find the cover letter reflecting what was sent to the Court, a copy of which was sent to your office (albeit not to your attention). The documents, you may note, are all public and in IID's hands.

I encourage you to review the transcript. The Court of its own accord asked petitioners for certain clarification, which I provided. The Court set the briefing dates and asked for an order reflecting those dates and to try to resolve the matter by compromise. I conferred with Mr. McNamara after the hearing about preparing the order and about compromise. I understood that Mr. McNamara did not have authority to negotiate about the records sought and so merely asked of him to brief you about what occurred and have you call me to discuss compromise. Thus far, IID has not indicated ANY willingness to provide water data in a protected fashion (e.g., under a confidentiality agreement), much less to do so in a timely manner so as to afford its beneficiaries a realistic ability to protect themselves in the pending part 417 proceeding. I also suggested that your office prepare the order since it seemed simpler and I would be on the road until today. Mr. McNamara graciously agreed.

As a matter of courtesy I am providing to you a copy of the written statement I delivered on Tuesday night at the IID board meeting, since a part of that statement bears on the present action.

Sincerely,

A handwritten signature in dark ink, appearing to read 'T. Virsik', written in a cursive style.

Thomas Virsik

Encl. Order (signed)  
Letter of 5/20/03  
5/20/03 statement

HORTON, KNOX, CARTER & FOOTE  
ATTORNEYS AT LAW  
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ORLANDO B. FOOTE  
JOHN PENN CARTER, A.P.C.  
FRANK A. OSWALT, III, A.P.C.  
DENNIS H. MORITA  
PHILIP J. KRUM, JR.  
MERCEDES Z. WHEELER  
PATRICK M. PACE

MARGARITA HAUGAARD  
VANCE M. TAYLOR  
WILLIAM S. SMERDON  
CARRIE A. DOWNEY  
DANIEL T. McNAMARA

OF COUNSEL  
PAUL D. ENGSTRAND

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SAN DIEGO, CA 92101-3536  
TELEPHONE (619) 595-0220  
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E-mail: [hkcfstd@earthlink.net](mailto:hkcfstd@earthlink.net)

May 22, 2003

Thomas S. Virsik  
Law Office of Patrick J. Maloney  
2425 Webb Avenue, Suite 100  
Alameda Island, California 94501-2922

Via Facsimile  
(510) 521-4623

Re: Jordan et al. v. Imperial Irrigation District

Dear Mr. Virsik:

I am somewhat taken aback by the events that apparently occurred on May 20<sup>th</sup> at the ex parte hearing. I was notified of the hearing by Mr. Gerber of Sutherland & Gerber. Mr. Gerber assured me that the sole purpose of the hearing was to establish a briefing schedule and set a date for the hearing on your application. Based on that representation, I sent Mr. McNamara with instructions to agree to a date for the hearing in approximately 15 days, and the make note of any briefing schedule established by the Court. I assured him that the merits of your application would not be addressed at the hearing, per Mr. Gerber's representations.

It is my understanding that contrary to Mr. Gerber's representations, the merits were discussed at the hearing. Now I understand that the Court has made an ex parte communication with your office, apparently requesting more information from you.

I further understand that the Court ordered me to prepare an order after hearing. I find that rather unusual given that the purpose of the hearing was to shorten time for the hearing on your application. The request to shorten time was made by your office, as prevailing party you should have been ordered to prepare the order after hearing. It makes no sense for me to do it, as I was not in attendance.

Mr. McNamara had the foresight to request a transcript of the hearing. I am anxious to review it to see what besides the briefing schedule was addressed at the hearing.

I intend to bring these concerns to the Court's attention in my opposition and at the next hearing, and ask the Court to consider whether he can fairly proceed with this matter given the ex parte communication with your office.

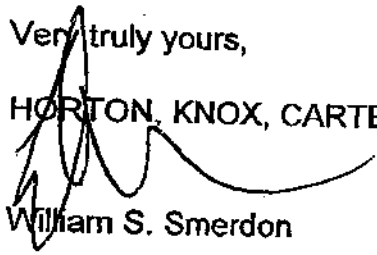
Thomas S. Virsik  
April 28, 2003  
Page 2

I enclose an order for your review. The order addresses the briefing schedule and date for the hearing only. I will not consent to the inclusion of any other matters in the order. If the order is agreeable to you please let me know and I will submit it to the Court for signature. In your voice mail message this morning, you indicated that you will insist on getting this order on file as soon as possible. I remind you that the order may not be filed until after the Court signs it. I also would like to warn you that Judge Harmon is notoriously slow at signing orders.

I await your response.

Very truly yours,

HORTON, KNOX, CARTER & FOOTE

  
William S. Smerdon

WSS/

encl.

1 Lowell F. Sutherland, No. 037721  
2 SUTHERLAND & GERBER  
3 1443 W Main St  
4 El Centro, CA 92243  
5 Phone: (760) 353-4444  
6 FAX: (760) 352-2533

7 Patrick J. Maloney, No. 042963  
8 Thomas S. Virsik, No. 188945  
9 LAW OFFICES OF PATRICK J. MALONEY  
10 2425 Webb Avenue, Suite 100  
11 Alameda, CA 94501-2922  
12 Telephone: (510) 521-4575  
13 State Bar No.: 042963  
14 Attorneys for JOHN JORDAN  
15 and EMIL SCHAFFNER

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF IMPERIAL**

18 JOHN JORDAN  
19 and EMIL SCHAFFNER

20 Petitioners

21 vs.

22 IMPERIAL IRRIGATION DISTRICT  
23 and RON HULL, Manager of Public  
24 Affairs

25 Respondents.

Case No.

M-0106

PETITION FOR WRIT OF  
MANDATE; MEMORANDUM  
OF POINTS AND  
AUTHORITIES; PROPOSED  
ORDER GRANTING WRIT;  
PROPOSED ALTERNATE WRIT

Date:

5/20/03

Time:

8:30 AM

Department 1

Judge

JAMES HARMON

26 Petitioners petition this Court for a Writ of Mandate directing respondent Imperial  
27 Irrigation District (IID) to provide to petitioners copies of public records contained in its  
28 files. Petitioner alleges as follows:

**PARTIES**

1. JOHN JORDAN and EMIL SCHAFFNER are residents of Imperial County  
and own land within the IID water service area.

2. IID is an irrigation district formed under the Water Code (sections 20510, et  
seq) and is for all purposes a public agency within the meaning of the Public Records Act.

3. Respondent Ron Hull ("Hull") is a public official who is employed by IID as

1 its manager of Public Affairs, and who is charged with disclosing or withholding records  
2 requested under the Public Records Act,

3 FACTUAL ALLEGATIONS

4 4. On September 19, 2002, petitioners caused through counsel to be sent to IID a  
5 written request for certain public records of IID. A true copy of said written request is  
6 enclosed herewith as Exhibit 1, as re-printed from the electronic records of this office (as are  
7 all other exhibits generated from this office).

8 5. On October 7, 2002 petitioners caused to be sent to IID a follow-up letter to  
9 IID through counsel. A true copy of said letter is enclosed herewith as Exhibit 2.

10 6. Both letters were faxed with confirmation and mailed with postage prepaid to  
11 IID.

12 7. IID faxed to this office a belated reply letter dated October 10, 2002. Exhibit 3.

13 8. By letter of even date, this office reiterated its willingness to pay for the copies  
14 and to coordinate with IID in order to get the records produced quickly. Exhibit 4.

15 9. IID provided voluminous material on November 1, 2002. IID provided only a  
16 summary of total annual water charges, rather than the items requested under requests 27 and  
17 28 (the same requests were made in 29 and 30 and the response is equally applicable). A  
18 copy of the response is attached hereto as Exhibit 5. At the bottom of Page 2 of Attachment  
19 1 of this November 1, 2002 letter, IID claims the records are "confidential". The last page  
20 contains a rudimentary spreadsheet showing the total annual water charges and sales.

21 10. This office confirmed the receipt of the material by letter of November 5, 2002,  
22 a copy of which is attached as Exhibit 6. This office again sought the detailed water  
23 information, pointing out that IID had not timely objected.

24 11. On November 15, 2002 this office confirmed a telephone conversation initiated  
25 by IID staff that alleged that it had not received the prior letter in a timely manner. A copy is  
26 attached hereto as Exhibit 7. This office agreed to provide additional time for further IID  
27 response. No other documents related to the detailed water use information have been  
28 provided.



12. On several occasions since the last date of written communication, this office has had oral contacts with IID representatives seeking further production of the requested items, all of which have proved fruitless.

13. On April 15, 2003 via letter to IID's representatives, this office again asked for the detailed water information. A copy of said letter (faxed) is attached hereto as Exhibit 8.

14. On or about April 18, 2003, the United States District Court for the Southern District of California issued an order in the matter of IID v. USA, No. 03CV0069, a copy of which order is attached as Exhibit 9. Said order provides that as of May 1, 2003 the IID and all persons who have an interest in using water in IID's service area will have an opportunity to commence a process designed to determine the quantity of water to which they may be entitled. That process is to conclude in October 2003. Petitioners ask the Court to take judicial notice of said order, which is also proffered by IID as authentic at its website, <http://www.iid.com/pressbox/press.read.php3?which=359>.

15. On or about April 23, 2003 this office caused to be sent to counsel for IID a letter setting forth the basis of this action and requesting a response. Drafts of the instant moving papers were provided. A copy of said letter is attached hereto as Exhibit 10.

16. On or about April 28, 2003 counsel for IID responded and enclosed a November 15, 2002 letter allegedly sent by IID's public information department that relied on Government Code section 6254.16 (mistakenly ascribed to the Water Code). A copy of said letter with the enclosure is attached hereto as Exhibit 11.

17. On or about May 2, 2003, this office caused to be sent to counsel or IID a response letter (1) noting the limitations of section 6254.16 in the instant case and (2) suggesting that this action proceed solely on a defense under the section. No response has been received. A copy of said letter is attached hereto as Exhibit 12.

18. On or about May 9, 2003 this office caused to be sent a letter to counsel for IID informing it that this action would be filed this week. A copy of said letter is attached hereto as Exhibit 13.

19. The instant writ procedure has been chosen in lieu of the preferred notice

1 procedure (Local Rule 6.00) because of petitioners' need to have the underlying water use  
2 information as soon as possible so that petitioners and/or others may use it in the federal  
3 process, i.e., within the next 15-30 days.

4 20. Respondents have the present ability to perform the duty and produce the  
5 records to petitioners.

6 21. Petitioners have no plain, speedy, and adequate remedy in the ordinary course  
7 of the law other than the issuance by this court of a writ of mandamus.

8 22. As the result of respondents' refusal to provide the requested records,  
9 petitioners have been forced to retain the services of counsel in filing this action. Should  
10 petitioners prevail in this matter, petitioners should be awarded costs and reasonable  
11 attorney's fees against IID pursuant to Govt. Code 6259(d).

12  
13 WHEREFORE petitioners respectfully pray that:

- 14 1. An alternative writ of mandate under the seal of this Court issue commanding  
15 IID, Ron Hull, and its agents, officers, and staff to produce all of the documents  
16 requested within three days, or to show before this Court at a time and place  
17 then or thereafter specified by the Court why it has not done so and why a  
18 preemptory writ should not issue;
- 19 2. After a hearing on this petition, this Court issue a preemptory writ commanding  
20 IID and its agents, officers, and staff (including Ron Hull) to produce all of the  
21 documents requested;
- 22 3. Petitioner be awarded costs and attorney fees for this action; and  
23 4. Other relief be granted as the Court considers just and proper.
- 24

25 Date: \_\_\_\_\_, 2003 \_\_\_\_\_

26 Thomas Virsik  
27 Attorney for Petitioners  
28

LAW OFFICES OF  
**PATRICK J. MALONEY**

2425 WEBB AVENUE, SUITE 100  
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FAX (510) 521-4623  
San Francisco (415) 512-0406  
e-mail: PJMLAW@pacbell.net

THOMAS S. VIRSIK

Via fax 760.482.9611 and mail

Mr. Jesus Silva, GM  
Imperial Irrigation District  
1284 Main Street  
El Centro, CA 92243

Re: California Public Records Act Request

Dear Mr. Silva:

We request the following documents under the California Public Records Act. We are, of course, prepared to pay for the costs of reproducing the data and are willing to expedite the receipt of the materials. In that vein, we are ready to travel to IID's offices to inspect the materials and have copies prepared by a copy service so as to cause minimum disruption of IID's business and to obtain the records without delay.

1. All annual reports relating to finances of the Imperial Irrigation District (IID) since its inception.
2. All annual reports relating to water usage of the Imperial Irrigation District since its inception.
3. All agreements between Imperial Irrigation District and Imperial Water Company No. 1
4. All agreements between Imperial Irrigation District and Imperial Water Company No. 2
5. All agreements between Imperial Irrigation District and Imperial Water Company No. 3
6. All agreements between Imperial Irrigation District and Imperial Water Company No. 4

7. All agreements between Imperial Irrigation District and Imperial Water Company No. 5
8. All agreements between Imperial Irrigation District and Imperial Water Company No. 6
9. All agreements between Imperial Irrigation District and Imperial Water Company No. 7
10. All agreements between Imperial Irrigation District and Imperial Water Company No. 8
11. All agreements between Imperial Irrigation District and Imperial Water Company No. 9
12. All agreements between Imperial Irrigation District and Imperial Water Company No. 10
13. All records of Imperial Water Company No. 1
14. All records of Imperial Water Company No. 2
15. All records of Imperial Water Company No. 3
16. All records of Imperial Water Company No. 4
17. All records of Imperial Water Company No. 5
18. All records of Imperial Water Company No. 6
19. All records of Imperial Water Company No. 7
20. All records of Imperial Water Company No. 8
21. All records of Imperial Water Company No. 9
22. All records of Imperial Water Company No. 10
23. All records on which IID bases its claim of ownership of water rights in existence prior to January 1, 1915
24. All records on which IID bases its claim of trusteeship of water rights in existence prior to January 1, 1915
25. All records on which IID bases its claim of ownership of water rights in existence after January 1, 1915
26. All records on which IID bases its claim of trusteeship of water rights in existence after January 1, 1915
27. Electronic copies of all Water Availability Statements for Fiscal Years 1990-2002
28. Electronic copies of all Water Charges for Fiscal Years 1990-2002
29. Paper copies of all Water Availability Statements for Fiscal Years 1990-2002
30. Paper copies of all Water Charges for Fiscal Years 1990-2002
31. Copies of all correspondence including drafts of documents between IID and Stone and Webster in connection with the Efficiency Study prepared by Stone & Webster for IID

32. All documents supplied to the IID pursuant to the Agreement between Southern Pacific and Imperial Irrigation District dated February 8, 1915.

If you need clarification or believe you will not be able to respond within the statutory time, please advise.

Sincerely,

PATRICK J. MALONEY

c. IID Board Member Allen

IID Board Member Horne

IID Board Member Kuhn

IID Board Member Maldonado

IID Board Member Mendoza

Celeste Cantu, SWRCB,  
(In re: Petition under Permit 76433, Application No. 7482)  
PO Box 100  
Sacramento, CA 95814

MWD  
Ellison, Schneider & Harris  
2015 H Street  
Sacramento, CA 95814

CVWD  
Redwine & Sherrill  
1950 Market Street  
Riverside, CA 92501

SDWA  
Daniel J. Hentschke  
3211 Fifth Avenue,  
San Diego, CA 92103

Salton Sea Authority  
Tom Kirk  
78-401 Highway 111, Suite F  
La Quinta, CA 92253-2066

County of Imperial  
County Counsel's Office  
940 Main Street, Suite 205  
El Centro, CA 92243

Counsel for IID  
Horton, Knox, Carter & Foote  
895 Broadway, Suite 101  
El Centro, CA 92243

Robert Johnson, Regional Director  
Lower Colorado Regional Office  
PO Box 61470  
Boulder City, NV 89006-1470

Hon. Bennett Raley  
Assistant Secretary - Water  
1849 C Street NW  
Washington, DC 20240

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THOMAS S. VIRSIK

Via fax 760.482.9611 and mail  
October 7, 2002

Mr. Jesus Silva, GM  
Imperial Irrigation District  
1284 Main Street  
El Centro, CA 92243

Re: California Public Records Act Request of September 19, 2002

Dear Mr. Silva:

We have to date not received any response to our request of September 19, 2002 (faxed and mailed to you). Government Code § 6255 (all refusals to provide records and the justification thereof must be in writing). The time for response has passed and you have offered no justification for refusing to provide the records sought. Water Code § 21402 (records of irrigation district are public); New York Times v. Superior Court (1990) 218 Cal.App.3<sup>rd</sup> 1579 (water district must release its list -- including names and addresses -- of excessive water users). Nevertheless, in the interest of avoiding litigation and its potential for an award of fees and costs for improper withholding of any data, our client has authorized us to withhold taking further action until Thursday, October 10, 2002. Government Code §§ 6258, 6259.

Sincerely,

PATRICK J. MALONEY

**EXHIBIT 2**

c. IID Board Member Allen

IID Board Member Horne

IID Board Member Kuhn

IID Board Member Maldonado

IID Board Member Mendoza

Celeste Cantu, SWRCB,  
(In re: Petition under Permit 76433, Application No. 7482)  
PO Box 100  
Sacramento, CA 95814

MWD  
Ellison, Schneider & Harris  
2015 H Street  
Sacramento, CA 95814

CVWD  
Redwine & Sherrill  
1950 Market Street  
Riverside, CA 92501

SDCWA  
Daniel J. Hentschke  
4677 Overland  
San Diego, CA 92123

Salton Sea Authority  
Tom Kirk  
78-401 Highway 111, Suite F  
La Quinta, CA 92253-2066

County of Imperial  
County Counsel's Office  
940 Main Street, Suite 205  
El Centro, CA 92243

Counsel for IID  
Horton, Knox, Carter & Foote  
895 Broadway, Suite 101  
El Centro, CA 92243



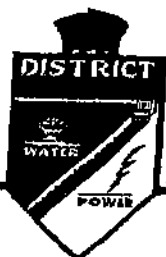
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Robert Johnson, Regional Director  
Lower Colorado Regional Office  
PO Box 61470  
Boulder City, NV 89006-1470

Hon. Bennett Raley  
Assistant Secretary - Water  
1849 C Street NW  
Washington, DC 20240

10/10/02 THU 11:45 FAX

001



# IMPERIAL IRRIGATION DISTRICT

PUBLIC INFORMATION DEPARTMENT • 1284 MAIN STREET • EL CENTRO, CA 92243

October 10, 2002

Patrick J. Maloney  
Law Offices of Patrick J. Maloney  
2425 Webb Avenue, Ste. 100  
Alameda Island, CA 94501-2922

Dear Mr. Maloney:

Thank you for your request for information dated September 19, 2002 and your subsequent letter dated October 7, 2002.

Our office has been advised by the General Manager that your request cannot be filled until October 30, 2002. Your request is an extensive request that entails several department employees' time in researching and retrieving information and documents from IID's archival files as well as copying. While costs will be incurred in accomplishing this effort, I do not have an estimate at this time.

We apologize for the delay in notifying you of an extension to provide this information. If you have any questions, please do not hesitate to call our office at 760-482-9602.

Sincerely,

*for Ron Hull*  
RON HULL

Manager, Public Information

cc: GM  
LE  
Board

EXHIBIT 3

LAW OFFICES OF  
**PATRICK J. MALONEY**

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ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY

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e-mail: PJMLAW@pacbell.net

THOMAS S. VIRSIK

Via fax 760.482.9611 and mail  
October 10, 2002

Mr. Ron Hull, Manager  
Public Information Dept.  
Imperial Irrigation District  
1284 Main Street  
El Centro, CA 92243

Re: California Public Records Act Request of September 19, 2002

Dear Mr. Hull:

Thank you for your faxed letter of today. As our initial letter of September 19, 2002 stated, we are prepared and willing to expedite matters and reduce the burden to staff by traveling to the District to peruse the archival or other files. In this way your staff will be saved the loss of time for copying. We may also be able to reduce duplication of material. Additionally, once you do have copies available to transmit, please let us know so that you can use our UPS account so that they may be overnighted at no cost to the District. We can be available to inspect records at IID towards the latter part of next week or the beginning of the next.

Sincerely,

PATRICK J. MALONEY



# IMPERIAL IRRIGATION DISTRICT

PUBLIC INFORMATION DEPARTMENT • 1284 MAIN STREET • EL CENTRO, CA 92243

November 1, 2002

Patrick J. Maloney  
Law Offices of Patrick J. Maloney  
2425 Webb Avenue, Ste. 100  
Alameda Island, CA 94501-2922

Dear Mr. Maloney:

In response to your request of September 19, 2002, I have listed the documents we are providing you today that should complete your request. There are a couple of documents that could not be found, therefore is noted on the attached.

Per your phone conversation with you previously, a representative from Sutherland & Gerber to pick up these documents on behalf of your office. For our records, I will have the individual sign to that affect on the page listing the documents. A copy of this letter and the signed page will be faxed to you today. When I receive the final document, I will finalize an invoice for the costs incurred.

If you have any questions, please free to call our office at 760-482-9602.

Sincerely,

SUSIE CARRILLO  
Administrative Assistant  
Public Information Department

Encls.  
cc: GM  
LE  
Board  
Water  
RPM  
File

**Law Offices of Patrick J. Maloney**  
**Request for Information dated 9/19/02**  
**November 1, 2002**  
**Page 2**  
**Attachment #1**

**Item #3 thru #12 – All agreements between IID and Imperial Water Companies 1-10 &  
Items #13 thru #22 – All records of Imperial Water Companies #1-10**

Imperial Water Co #1	- Quit Claim Deed (QCD) 11-1-22
Imperial Water Co #2	- QCD dated 11-3-22
Imperial Water Co #3	- Agreement of Purchase 11-27-14
	- QCD dated 5-9-23
	- QCD dated 6-9-23
Imperial Water Co #4	- Minutes of Special Mtg of Stockholders... dated 10-8-22 (includes QCD dated 10-28-22 and minutes of mtg of the Brd of Directors dated 10-31-22)
	- Grant Deed dated 2-1-23
	- QCD dated 10-28-22
Imperial Water Co #5	- QCD dated 11-1-22
Imperial Water Co. #6	- QCD dated 10-30-22
Imperial Water Co. #7	- QCD dated 10-10-22
Imperial Water Co. #7	- QCD dated 12-1-22
Imperial Water Co. #8	- QCD dated 2-21-23
	- Resolution dated 11-2-22
Imperial Water Co. #9	- QCD dated 12-27-22
Imperial Water Co. #10	- No documents found

**Item #23 thru #26 -- All records on which IID bases its claim of ownership of water rights in  
existence prior to January 1, 1915**

See Attachment #2. These documents can be found at the Recorder's  
Office in Los Angeles, San Diego and Imperial Counties.

**While not on your request, we have included the following Quit Claim Deeds:**

South Alamo Water Company dated 11-11-22  
Imperial Eastside Water Company dated 10-30-02  
Imperial East Side Water Company (bill of sale) dated 3-24-23  
Imperial Southside Water Company dated 10-24-02  
Imperial South Side Water Company dated 8-06-12  
Niland Water District dated 11-24-41  
Imperial Water Co. #12 dated 10-31-22  
California Development & Imperial Land Company dated 4-20-07

**Items 27 & #28 – Electronic copies of all water availability statements and water charges for fiscal  
years 1990-2002**

Excel Spreadsheet attached which lists water availability and water  
charges for the years requested. Due to statements containing customer  
information, these documents are considered confidential and cannot be  
provided.

Law Offices of Patrick J. Maloney  
Request for Information dated 9/19/02  
November 1, 2002  
Page 3  
Attachment #2

**Item #31 - Copies of all correspondence including drafts of documents between IID and Stone and Webster in connection with the Efficiency Study prepared by Stone & Webster for IID**

We are currently waiting for this information and will provide it no later than Tuesday, Nov. 5.

**Items #23-26**

April 12, 1859	Resolution of California Legislature re Wozencraft reclamation.
April 15, 1859	Chapter CCXXXIV, Statutes California 1859, Act Calif. Legislature re Wozencraft matter.
Mar. 25, 1886	Report 1321, 49 <sup>th</sup> Cong., 1 <sup>st</sup> Session on H.R. 3219. A bill re fresh water on Colorado Desert. Adopts Report 380 of 45 <sup>th</sup> Cong., 2 <sup>nd</sup> Session, approving "Wozencraft bill".
Oct. 28, 1890	Report of Army Engineers (War Dept.) Ex. Doc. 18, 51 <sup>st</sup> Cong., 2 <sup>nd</sup> Session, made under Rivers and Harbors Act of Sept. 19, 1890, requiring report of Colorado River for improvement of navigation of that river reporting that Colorado River not worthy of improvement by general government.
Feb. 7, 1893	Report 2440 52 <sup>nd</sup> Cong. 2 <sup>nd</sup> Session re H.R. 10348 to give Colorado River Irrigation Company a right of way through Yuma Indian Reservation in California—to build canal to take water of Colorado River west to develop lands in Southern California.
Feb. 15, 1893	Chapter 120, 52 <sup>nd</sup> Cong. 2 <sup>nd</sup> Session, granting Colorado River Irrigation Co. right of way across Yuma Indian Reservation to take water to water west to area in Imperial Valley from "Laguna".
July 1893	Engineering Report of C. R. Rockwood to the Colorado River Irrigation Co. re irrigating "Salton Basin".
Dec. 2, 1893	C. R. Rockwood filing for 500,000 miners inches near Potholes, Book 3, page 413, San Diego.
April 21, 1894	Judgment Hawgood v. Colorado River Irrigation Co., Case 21215, L.A. Superior Court.
May 2, 1894	D. E. Beatty filing for 500,000 miners inches at Potholes recorded Book 2, page 457, San Diego.
May 25, 1894	Execution Sale to Hawgood by L.A. Sheriff personal property including maps, L.A. Case 21215.

June 19, 1894	Execution sale to Hawgood by Sheriff San Diego County personal property of Colorado River Irrigation Co. in case Hawgood v. Colorado River Irrigation Co., L.A. 21215.
Oct. 20, 1894	Execution sale to Hawgood by Sheriff San Diego County of franchise and right of way of Colorado River Irrigation Co. at Potholes.
Nov. 28, 1894	Filing of Hawgood 10,000 c.f.s. from Potholes through Mexico to Imperial Valley dated Nov. 28, 1894, recorded Dec. 12, 1894, Book 2, page 463, San Diego.
Mar. 2, 1895	Filing John C. Beatty 500,000 miners inches at Potholes Lower California and Riverside and San Diego Counties recorded March 5, 1895, Book 2, page 471, San Diego.
May 16, 1895	E. I. Rockwell filing 10,000 c.f.s. at Hanlon for New River country recorded May 18, 1895 Book 3, page 3, San Diego.
May 21, 1895	Agreement of sale by Hanlon to Rockwell of Hanlon property.
July 15, 1895	Filing of W. T. Gonder for 10,000 c.f.s. at Hanlon for Lower California and New River area recorded July 17, 1895, Book 3, page 16, San Diego.
Sept. 13, 1895	Filing by W. T. Heffernan 10,000 c.f.s. at Hanlon for Mexico and San Diego County, recorded Sept. 16, 1895, Book 3, page 35, San Diego.
Nov. 12, 1895	Filing by W. T. Gonder for 10,000 c.f.s. at Hanlon for use in Lower California and San Diego County, recorded Nov. 14, 1895, Book 3, page 46, San Diego.
Jan. 14, 1896	Filing of W. T. Gonder for 10,000 c.f.s. at Hanlon for Lower California and New River country in San Diego County, recorded Jan. 16, 1896, Book 3, page 58, San Diego.
Mar. 16, 1896	Filing of W. T. Heffernan for 10,000 c.f.s. at Hanlon for New River, recorded Mar. 18, 1896, Book 3, page 76, San Diego.
Mar. 16, 1896	Hanlon extension of time for payments under contract sale of May 21, 1895 (B-115) witnessed by Gonder and Rockwood—and on which Heffernan assigned <u>his</u> interest to Philip Van Volkenburgh, recorded Dec. 21, 1898, Book 275, Deeds, page 243, San Diego.
April 24, 1896	Articles of Incorporation filed in New Jersey by California Development Co. certified by Secretary of State and Governor of New Jersey (attached to certificate of Secretary of State of California re C. D. Co. qualifying Nov. 23, 1901 in California. See D-210 for mere certificate but use B-122.1 for full record of C. D. Co. qualified from July 14, 1900 to March 2, 1918.
April 25, 1896	Minutes of meeting of incorporators of C. D. Co. (first meeting) certified to by Jeffries as part of records of Imperial Irrigation District.
May 16, 1896	Filing by W. T. Heffernan for 10,000 c.f.s. at Hanlon for Lower California and "New River Country" recorded May 18, 1896, Book 3, page 96, San Diego.
Aug. 4, 1896	Conveyance by Philip Van Volkenburgh as trustee (under agreement of Feb. 19, 1896 and instrument of April 24, 1896) to California Development Co. of contract May 21, 1895 with Andrade and Ferguson, contract of May 21, 1895 with Hall Hanlon and—subject to a lien for \$3500 to Heffernan—all the properties of

Colorado River Irrigation Co. purchased by Hawgood, and transferred by Hawgood to C. R. Rockwood thence to Heffernan—thence to Philip Van Volkenburgh, recorded Dec. 21, 1898, Book 275, page 245, San Diego.

Oct. 6, 1896 Report of C. R. Rockwood to California Development Co. certified by Jeffries as part of records of C. D. Co. files in files of I.I.D.

Oct. 20, 1896 Filing by W. T. Heffernan at Hanlon for 10,000 c.f.s. Lower California and San Diego County. Recorded Oct. 23, 1896, book 3, page 134, San Diego.

Dec. 5, 1896 Agreement of Sale by Hanlon to C. D. Co. of half interest Hanlon property, recorded June 13, 1901, Book 311, page 162, O.R., San Diego.

Dec. 5, 1896 Deed, Hall Hanlon to C. D. Co. for half interest Hanlon property recorded, Book 328 Deeds, page 290, San Diego, March 2, 1903.

Dec. 14, 1896 Deed, James W. Shanklin and wife to C. D. Co., half interest Hanlon property, recorded Jan. 11, 1897, Book 259, page 199, Deeds, San Diego.

Jan. 23, 1897 Filing by W. T. Heffernan for 10,000 c.f.s. from Hanlon New River area, recorded Jan. 25, 1897, Book 3, page 152, San Diego.

Mar. 27, 1897 Filing by W. T. Gonder for 10,000 c.f.s. from Hanlon for New River area. Recorded Mar. 29, 1897, Book 3, page 160, San Diego.

May 21, 1897 Agreement extending time for six months to C. D. Co. for payments re deed Dec. 5, 1896 to C. D. Co. — recorded June 13, 1901, Book 311, page 165, San Diego.

June 21, 1897 Notice by C. D. Co. to Andrade of acceptance of contract of May 8, 1897 by which Andrade agreed to sell C. D. Co. the northerly 100,000 acres in Lower California and assign to C. D. Co. Andrade's colonization contract for this area from Mexican government and concession granted Andrade by Mexican government Feb. 27, 1897 and C. D. Co. agreed to construct canal from Hanlon to Salton River (and deliver to Andrade certain stock and script). Recorded Aug. 11, 1903, Book 323, page 414. (Includes copy of contract between Andrade and C. D. Co. dated May 8, 1897.)

July 24, 1897 Filing by W. T. Heffernan 10,000 c.f.s. at Hanlon for New River Country. Recorded July 26, 1897, Book 3, page 168, San Diego.

Aug. 16, 1897 Correction deed James Shanklin and wife to C. D. Co. re half interest Hanlon property. Recorded Dec. 21, 1898, Book 275, page 248 O.R., San Diego.

April 25, 1898 Filing by W. T. Gonder for 10,000 c.f.s. at Hanlon for Lower California and New River Country, San Diego County. Recorded April 28, 1898, Book 3, page 210, San Diego.

May 15, 1898 Articles of Incorporation and By-Laws of Sociedad de Irrigacion y Terrenos de la Baja California, translation certified by County Clerk, L.A. in case of Title Insurance and Trust Co. v. C. D. Co. No. 81926 L.A., a part of files of said case. (This is case of same title reported in 171 Cal 173.)

June 29, 1898 Contract between Andrade and C. D. Co. reciting previous contracts (May 21, 1895, March 1896, June 3, 1896, May 8, 1897) and that it was found the northerly 100,000 acres could not legally be deeded to C. D. Co. and it was necessary to form a corporation under Mexican laws to hold the title, and it



agreed that a Mexican corporation was to be organized to be known as Sociedad de Irrigacion y Terrenos de la Baja California and the land conveyed to that Sociedad and the stock thereof (12,500 shares) be issued with right of C. D. Co. to purchase the stock (11,995) shares). Recorded Aug. 11, 1903, Book 323, page 418, San Diego.

- Nov. 4, 1898 Filing by W. T. Gonder for 10,000 c.f.s. at Hanlon for Lower California and San Diego County New River Country. Recorded Nov. 7, 1898, Book 3, page 234, San Diego.
- Dec. 15, 1898 Filing by William T. Heffernan for self and C. D. Co. 10,000 c.f.s. at Hanlon for Lower California and New River Country, San Diego County. Recorded Dec. 19, 1898, Book 3, page 242.
- Dec. 21, 1898 Filing by C. N. Perry for self and C. D. Co. 10,000 c.f.s. at Hanlon for Lower California and New River Country, San Diego County. Also includes assignment to C. D. Co. of filing, rerecorded Jan. 5, 1899, Book 3, page 247, San Diego.
- Jan. 18, 1899 Assignment by Heffernan to C. D. Co. of filing for 10,000 c.f.s. at Hanlon of previous filings. Recorded Book 3, page 250, Feb. 1, 1899.
- Jan. 25, 1899 Assignment by W. T. Gonder to C. D. Co. previous filings for 10,000 c.f.s. at Hanlon for Lower California and New River Country, San Diego County. Recorded Feb. 1, 1899, Book 2, page 251, San Diego.
- Feb. 20, 1899 Filing by C. N. Perry for self and C. D. Co. for 10,000 c.f.s. at Hanlon for Lower California and New River Country, San Diego County. Recorded Feb. 23, 1899, Book 3, page 259, San Diego. Includes assignment by Perry to C. D. Co. of the filing.
- Mar. 6, 1899 Agreement between Sociedad de Irrigacion y Terrenos de la Baja California and Andrade and wife wherein Sociedad agrees to redeem the land script sold and issued to Andrade by C. D. Co. - grant to Andrade right of way across lands of Sociedad - Andrade conveys to Sociedad right to use Salton or Carter River channel - grants to Sociedad right to purchase 100,000 acres south of the 100,000 acres the Sociedad acquired from Andrade for 60¢ per acre - Sociedad recognizes agreement between Andrade and C. D. Co. dated June 29, 1898. Recorded Aug. 11, 1903, Book 323, page 424, O.R., San Diego.
- April 25, 1899 Filing by C. N. Perry for self and C. D. Co. for 10,000 c.f.s. at Hanlon for Lower California and New River Country in San Diego. Recorded May 2, 1899, Book 3, page 280, San Diego. Includes assignment by Perry to C. D. Co. of this filing.
- Mar. 23, 1900 Articles of Incorporation of Imperial Water Co. No. 1 to secure supply of water from Sociedad and to distribute the water to its stockholders in Imperial Valley certified by County Clerk of San Diego County.
- April 3, 1900 Contract between George Chaffey and C. D. Co. reciting C. D. Co. owns all stock of Sociedad and Sociedad owns about northerly 100,000 acres and C. D. Co. desires to construct canals to use waters of Colorado River and desires services of Chaffey and Imperial Water Co. No. 1 has a contract with Sociedad for water - C. D. Co. hires Chaffey as general manager to construct works and canal. Attached as exhibits are:

1. Contract between Sociedad and No. 1.

2. Contract between C. D. Co. and Imperial Land Company, appointing Land Co. as agent to "colonize" valley lands. Certified by Jeffries.

July 1, 1900	Trust Indenture from C. D. Co. to Title Insurance and Trust Co. as trustee recorded Dec. 31, 1900, Book 306, page 46, San Diego, to secure \$500,000 first mortgage bonds of C. D. Co. secured by property of C. D. Co. (All its assets including real and personal property and stock of Mexican Co.)
Aug. 17, 1900	Agreement between Andrade as first party and C. D. Co. as second party and Geo. Chaffey as third party providing for transfer of assets of C. D. Co. to trustee and bonds of Co. to be placed (1/2 of issue) with Farmers and Merchants Bank of L.A. as security for Andrade, who is to transfer stock of Mexican Co. and his stock in C. D. Co. to C. D. Co. and in which in addition to payments to be made to Andrade C. D. Co. is to complete canal from Hanlon to California line in Valley before Aug. 1, 1901.
Sept. 25, 1900	Amended Articles of Imperial Water Co. No. 1 filed in L.A. and San Diego Counties, certified copy by Clerk of San Diego.
Dec. 14, 1900	Amended Articles of Incorporation of Imperial Water Co. No. 4 executed and in 1907 filed in L.A. and San Diego. Certified to by Clerk of San Diego County. (Recites purpose to secure supply of water from Sociedad and deliver to stockholders in Imperial Valley in area served by No. 4.)
1901	U.S. Dept. of Agriculture, Bureau of Soils. Soil survey around Imperial, California by Thomas H. Means and J. Garnett Holmes.
July 24, 1901	<p>Agreement between Sociedad – first party; Imperial Water Co. No. 1, second party; and C. D. Co. third party; reciting contract of April 6, 1900 for delivery by Sociedad to No. 1 of not to exceed 400,000 acre-feet annually and contract of Dec. 28, 1900 for delivery of water by C. D. Co. to Sociedad, it was then agreed</p> <ol style="list-style-type: none"><li>1. An agreement of April 6, 1900 Ex. A to above contract be abrogated.</li><li>2. Sociedad agreed to deliver to No. 1 four acre-feet per annum up to 400,000 acre-feet.</li><li>3. This water to be delivered by Sociedad at international line.</li><li>4. For sale of stock of NO. 1 by C. D. Co.</li><li>5. Charge for water to No. 1 50¢ per acre-foot per annum.</li><li>6. C. D. Co. agrees to construct main canal in No. 1 area.</li></ol> <p>Attached are contracts Ex. "A" of April 6, 1900 between Sociedad and No. 1. Ex. "B" contract Dec. 28, 1900 between C. D. Co. – Sociedad. All recorded Aug. 6, 1906, Book 393, page 370, Deeds, San Diego. (part of wording only – no attachment)</p>
Nov. 23, 1901	Certificate of Secretary of State of California that C. D. Co. as foreign corporation had qualified in California. See also B-122.1 for full certificate Secretary of State of California re C. D. Co. qualified from July 14, 1900 to Mar. 2, 1918.
July 1, 1902	Chapter 1377, 57 <sup>th</sup> Cong., 1 <sup>st</sup> Session, authorizing resurvey in San Diego County (Imperial Valley) – not to impair present bona fide claims of occupants.
Nov. 22, 1902	Articles of Incorporation, Imperial Valley Company No. 8 filed with Secretary of State of California, purposes of getting water from Sociedad for distribution to stockholders No. 8 in its area.

Jan. 13, 1903	Certificate re No. 1 changing place of business from L.A. to Imperial, California, certified by County Clerk, San Diego, California.
Feb. 26, 1903	Deed from Hanlon to C. D. Co. of Hanlon property recorded Mar. 9, 1903, Book 325, page 56, San Diego.
Aug. 20, 1903	Filing by Edmund T. Perkins for Secretary of the Interior for 100,000 c.f.s. 22-1/4 miles above Yuma for Yuma Valley to border. Recorded Aug. 20, 1905, Book 4, page 439, Misc. R., Yuma.
Oct. 21, 1903	Filing by E. T. Perkins 100,000 c.f.s. from Colorado at Head Gate Rock for Parker and Cibola Valleys. Recorded Oct. 27, 1903, Book 4, page 459, Misc. R., Yuma.
Feb. 8, 1904	S. 4193. Perkins Bill to authorize C. D. Co. to appropriate and divert water of Colorado River.
Mar. 8, 1904	H.R. 13627. Daniels Bill to authorize C. D. Co. to appropriate and divert water of Colorado River.
April 2, 1904	Heber and Smythe Statements before Senate Committee re S. 4193, Perkins Bill re C. D. Co. diversions.
May 23, 1904	Deed from Andrade to Colorado River Land Co., a Mexican corporation, to rights under previous contracts between Andrade and C. D. Co. and Sociedad, etc. as listed. Recorded June 25, 1904, Book 328, page 323, San Diego.
June 13, 1904	Indenture from Sociedad and Colorado River Land Co., a Mexican corporation, selling tract of land in Mexico. Recorded June 25, 1904, Book 325, page 326, Deeds, San Diego.
July 8, 1905	Filing by J. B. Lippincott for Secretary of the Interior under Act 1902 (32 Stat. 388) all unappropriated water of Colorado River amounting to 6,000 c.f.s. for Yuma and Imperial Valleys for diversion from Laguna recorded July 13, 1905, Book 3, page 455, San Diego.
Oct. 27, 1908	Certificate of Change of Principal Place of Business Imperial Water Co. No. 1 from L.A. to Imperial, certified by County Clerk of Imperial.
June 5, 1911	Petition for Formation of Imperial Irrigation District.
June 12, 1911	Minutes of the Board of Supervisors of Imperial County ordering election for the formation of the Imperial Irrigation District.
July 24, 1911	Minutes of the Board of Supervisors of Imperial County ordering formation of Imperial Irrigation District.
Aug. 15, 1911	Assignments of water filings by E. I. Rockwell to C. D. Co. recorded Aug. 19, 1911, Book 2, page 21. Water Claims, Imperial Valley Recorder.
Nov. 8, 1912	Supreme Court decision Nov. 8, 1912, Thayer v. Holabird as Receiver and Imperial Water Co. No. 1, 164 Cal. 117.
Jan. 4, 1913	California Superior Court decision and decree in Case No. 81926. Superior Court of L.A., Title Insurance and Trust Co. v. C. D. Co. et al including Sociedad and Compania de Terrenos y Aguas de la Baja California (Sociedad Anonima),

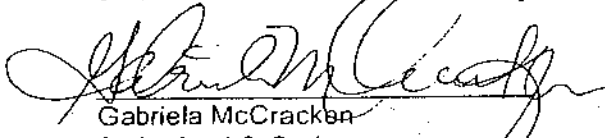
C. R. Rockwood, W. T. Heffernan, R. T. Perry and F. G. Blaisdell ordering sale of all properties of C. D. Co. in California and stock of Mexican companies as a unit and restraining conduct of S.P. in Mexico and holding all properties and system in California or Lower California a unit and to be sold (real and personal property to be sold as a unit), certified by Clerk of the Superior Court of L.A. For affirmance by California Supreme Court see 177 Cal.

Sept. 12, 1913	Notice of appropriation of 2,000 c.f.s. from El Rio Hill for District use. Recorded in Book 2, p. 31, Water Claims, Imperial County, certified by Clerk.
Sept. 12, 1913	Notice of appropriation of 8,000 c.f.s. for District lands. Recorded Sept. 19, 1913, Book 2, page 30, Water Filing, Imperial County, certified by Clerk.
June 27, 1914	Writ of Enforcement and Decree in Title Insurance and Trust Co. v. C. D. Co., Superior Court, L.A. County, Case No. 81926.
May 4, 1915	Chapter 172, Statutes 1915, California Legislature, authorizing Imperial Irrigation District to acquire by condemnation or purchase of properties of C. D. Co. and capital stock of Mexican company owning part of system and to issue and exchange bonds and make contracts with creditors to acquire - for not over \$3,000,000.
Dec. 28, 1915	Contract of Sale by Southern Pacific to Imperial Irrigation District of all properties of C. D. Co. and stock of Mexican company if bought in by Southern Pacific, certified by Secretary of Imperial Irrigation District.
Feb. 5, 1916	Order of Court, L.A. 81926, re turning over to Commissioner stock of Compania de Terrenos y Aguas de la Baja California, New Mexican Co., certified by County Clerk of L.A.
Feb. 8, 1916	Sale by Commissioner of C. D. Co. properties and stock of Mexican Co. to Southern Pacific. See Report of Sale 81926 L.A., H-329.
Feb. 14, 1916	Report of Sale by Commissioner to Southern Pacific and order fixing time for hearing, certified by Clerk of L.A. in Title Insurance and Trust Co. v. C. D. Co.
Feb. 23, 1916	Commissioner's Deed to Southern Pacific Co. of properties of C. D. Co. (including water rights, (p. 7)) and stock of Mexican Co. (p. 2), certified by Recorder of Imperial County, recorded Feb. 25, 1916, Book 103, page 368, Official Records, Imperial County.
April 5, 1916	Order of Discharge of Commissioner on Report of Sale to Southern Pacific of C. D. Co. properties and stock of Mexican Co., certified by County Clerk of L.A. in Title Insurance and Trust Co. v. C. D. Co., L.A. 81926.
June 15, 1916	Act of Congress, Chapter 147 (39 Stat. 226-27) creating Land Office at Imperial and transfer of Records from L.A.
June 22, 1916	Deed from Southern Pacific to Imperial Irrigation District for \$3,000,000 of properties of C. D. Co. and stock of Compania (p. 5) and water rights (p. 5), recorded June 26, 1916, Book 111, page 155 of Deeds, certified by Recorder of Imperial County.
July 26, 1916	Register of Action, Title Insurance and Trust Co. v. C. D. Co. et al, L.A. 81926, certified to by Clerk of Los Angeles County.

July 6, 1917	Contract between U.S. and Imperial Laguna Water Co. re All-American Canal.
June 17, 1919	Kettner Bill (H.R. 6044, 66 <sup>th</sup> Congress, 1 <sup>st</sup> Session) to authorize bonds of District to be accepted by U.S. and U.S. through Secretary of the Interior to build All-American Canal to irrigate lands in District and other lands in U.S. susceptible of irrigation from said All-American Canal (see Sec. 6, p. 4 and 5) according to surveys under Imperial Irrigation District - U.S. contract of Feb. 16, 1918.
Jan. 7, 1920	H.R. 11553, 66 <sup>th</sup> Congress, 2 <sup>nd</sup> Session, Kettner Bill. To authorize Secretary of the Interior to construct All-American Canal from Laguna Dam as per surveys made under contract Feb. 16, 1918 between Imperial Irrigation District and U.S. and to contract with Imperial Irrigation District and Coachella Valley County Water District and others (Sec. 1.)
Aug. 28, 1920	Contract under Kinkaid Act between Imperial Irrigation District and U.S. for investigation, cost estimates and report to Congress and for District financing part of costs, certified by District Secretary.
Jan. 27, 1921	Supplemental contract to Kinkaid Act contract of Aug. 28, 1920 re further District funds for lands irrigated and lands adjacent. Certified by Secretary of the District.
Jan. 10, 1922	Contract of sale by Imperial Water Co. No. 1 of properties to Imperial Irrigation District, certified by Secretary of District.
Oct. 10, 1922	Deed from Mutual Water Company No. 7 to Imperial Irrigation District, recorded Dec. 1, 1926, Book 55, page 128, Official Records of Imperial County.
Oct. 24, 1922	Deed from Imperial South Side Water Co. to Imperial Irrigation District, recorded May 21, 1926, Book 118, page 133, Official Records of Imperial County.
Oct. 28, 1922	Deed from Mutual Water Company No. 4 to Imperial Irrigation District, recorded May 21, 1926, Book 116, page 402, Official Records of Imperial County.
Oct. 30, 1922	Deed from Mutual Water Company No. 6 to Imperial Irrigation District, recorded May 21, 1926, Book 118, page 135, Official Records of Imperial County.
Oct. 31, 1922	Deed from Mutual Water Company No. 12 to Imperial Irrigation District, recorded Dec. 15, 1922, Book 197, page 11, Official Records of Imperial County.
Nov. 1, 1922	Deed from Mutual Water Company No. 1 to Imperial Irrigation District, recorded May 21, 1926, Book 116, page 406, Official Records of Imperial County.
Nov. 1, 1922	Deed from Mutual Water Company No. 5 to Imperial Irrigation District, recorded May 21, 1926, Book 118, page 129, Official Records of Imperial County.
Nov. 3, 1922	Deed from Mutual Water Company No. 2 to Imperial Irrigation District, recorded May 21, 1926, Book 116, page 406, Official Records of Imperial County.
Nov. 11, 1922	Deed from South Alamo Water Co. to Imperial Irrigation District, recorded May 21, 1926, Book 118, page 132, Official Records of Imperial County.
Dec. 1, 1922	Deed from Mutual Water Company No. 8 to Imperial Irrigation District, recorded May 21, 1926, Book 118, page 130, Official Records of Imperial County.
Dec. 22, 1922	Deed from Mutual Water Company No. 9 to Imperial Irrigation District, recorded May 21, 1926, Book 116, page 401, Official Records of Imperial County.

May 29, 1923	Deed from Mutual Water Company No. 3 to Imperial Irrigation District, recorded May 21, 1926, Book 116, page 404, Official Records of Imperial County.
May 31, 1923	Deed from New River Water Co. to Imperial Irrigation District, recorded June 23, 1923, Book 204 of Deeds, page 403, Official Records of Imperial County.
May 31, 1923	Deed from New River Water Co. to Imperial Irrigation District, recorded June 23, 1923, Book 204 of Deeds, page 404, Official Records of Imperial County.
June 9, 1923	Deed from Mutual Water Company No. 3 to Imperial Irrigation District, recorded Dec. 21, 1924, Book 55, page 130, Official Records of Imperial County.
Aug. 18, 1931	Seven Party Agreement:
Dec. 1, 1932	Imperial Irrigation District, United States, All American Canal Contract and Map and list of public lands to be served.
Jan. 11, 1933	Application 7482 to Division of Water Resources from Imperial Irrigation District to appropriate 10,000 cubic feet per second but not over 3,850,000 acre-feet per year for irrigation and domestic purposes. (Permit 7643 issued Jan. 6, 1950.
July 1, 1933	Findings and conclusions Hewes v All Persons No. 15460 Imperial County validating All American Contract Dec. 1, 1932.
July 1, 1933	Judgment in Hewes v All Persons No. 15460 Imperial.
Feb. 14, 1934	Agreement of Compromise between Imperial Irrigation District and Coachella Valley Water District.
July 29, 1942	Resolution of Imperial Irrigation District of inclusion of public lands as per Article 34, Sec. 132, All American Canal Contract. (Page A614, Hoover Documents by Ely, certified to on page 54 by District Secretary.)
Jan. 6, 1950	Permit 7643 from State of California.

Documents received on 11/1/02 by:

  
 Gabriela McCracken  
 Sutherland & Gerber  
 (on behalf of Law Office of Patrick J. Maloney)

Documents Given on 11/1/02 by:

  
 Susie Carrillo  
 Imperial Irrigation District  
 Public Information Department

WATER AND WATER AVAILABILITY  
FROM 1990 TO 2002

	<u>WATER AVAILABILITY</u>	<u>WATER SALES</u>
1990	1,963,527	29,192,420
1991	1,993,723	30,306,685
1992	2,135,018	25,756,289
1993	1,979,433	29,058,526
1994	1,957,545	31,995,403
1995	1,981,882	33,659,990
1996	2,951,788	36,716,934
1997	2,959,731	36,460,416
1998	2,969,222	38,623,849
1999	2,017,967	39,589,609
2000	1,969,390	40,297,730
2001	1,992,639	42,880,769
2002	-	32,914,615

LAW OFFICES OF  
**PATRICK J. MALONEY**

2425 WEBB AVENUE, SUITE 100  
ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY

(510) 521-4575  
FAX (510) 521-4623  
San Francisco (415) 512-0406  
e-mail: PJMLAW@pacbell.net

THOMAS S. VIRSIK

Via fax 760.482.9611 and mail  
November 5, 2002

Mr. Ron Hull, Manager  
Public Information Dept.  
Imperial Irrigation District  
1284 Main Street  
El Centro, CA 92243

Re: California Public Records Act Request of September 19, 2002

Dear Mr. Hull:

We are in receipt of various records your office has supplied pursuant to our request. Thank you for providing the records thus far. Several requests are as yet unresolved, as addressed below.

"Historic" Documents

Attachment 2 of Ms. Susie Carrillo's November 1, 2002 transmittal letter lists various documents from 1859 through 1950. I spoke with Ms. Carrillo and understand that IID has not been able to locate the documents at this time, but that it is still in the process of looking. They may be on microfiche or another archived system. We are willing to have an outside service make copies if the documents (or some portion) can be located.

Efficiency Study

I also understand from the transmittal letter and from my telephone conversation with Ms. Carrillo that staff is still working on the requests directed to the efficiency study.



Requests 27 and 28

The response to these requests is inadequate. As our letter of October 7, 2002 explained, the IID had failed to meet the statutory time in which to make objections or to assert statutory or other exemptions in light of the explicit presumption of the public nature of all irrigation district records. Water Code § 21402 (records of irrigation district are public). Moreover, the names and addresses of water "customers" are not privileged in this context. New York Times v. Superior Court (1990) 218 Cal.App.3<sup>rd</sup> 1579 (water district must release its list - including names and addresses -- of excessive water users). Please provide to us immediately the ordinance or resolution upon which you are relying in concluding that "customer" information is exempt from disclosure.

In the interest of avoiding litigation and its potential for an award of fees and costs for improper withholding of any data, our client has authorized us to withhold taking further action until Tuesday, November 12, 2002. Government Code §§ 6258, 6259.

Sincerely,

Thomas Virsik

LAW OFFICES OF  
**PATRICK J. MALONEY**

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THOMAS S. VIRSIK

Via fax 760.482.9611 and mail  
November 15, 2002

Attn. Susie Carillo  
Public Information Dept.  
Imperial Irrigation District  
1284 Main Street  
El Centro, CA 92243

Re: California Public Records Act Request of September 19, 2002

Dear Ms. Carillo:

I am confirming our telephone conversation on Wednesday evening, November 13, 2002, in which you informed us that your office had only just received the November 5, 2002 letter addressing the above and consequently IID would be unable to respond within the time-frames of the letter.

Consequently, we are extending the deadlines in the letter through and including November 21, 2002 as a courtesy to IID and its beneficiaries.

Sincerely,

Thomas Virsik

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THOMAS S. VIRSIK

Via fax

April 15, 2003

John P. Carter  
Horton, Knox, Carter & Foote

760.352.8540

David Osias  
Allen, Matkins et al.

619.233.1158

Re: California Public Records Act Request of September 19, 2002

Dear Messrs. Carter and Osias:

As you are likely aware, we made requests under the California Public Records act and Water Code § 21402 for certain water records of IID in September 2002. After various back and forth with IID staff, IID flatly refused to provide detailed records of water service.

- Electronic copies of all Water Availability Statements for Fiscal Years 1990-2002
- Electronic copies of all Water Charges for Fiscal Years 1990-2002
- Paper copies of all Water Availability Statements for Fiscal Years 1990-2002
- Paper copies of all Water Charges for Fiscal Years 1990-2002

Requests 27 et seq. Instead, IID provided a summary bereft of any individualized detail. As our letter of October 7, 2002 to IID explained, the IID had failed to meet the statutory time in which to make objections or to assert statutory or other exemptions in light of the explicit presumption of the public nature of all irrigation district records. Water Code § 21402 (records of irrigation district are public). Moreover, the names and

addresses of water "customers" are not privileged. New York Times v. Superior Court (1990) 218 Cal.App.3<sup>d</sup> 1579 (water district must release its list -- including names and addresses -- of excessive water users). IID was unable to provide to us any policy or resolutions that purported to create an exception for section 21402, and there are none.

We are, as a matter of courtesy, reiterating our request and our authority for making the request. In addition to the express public nature of all irrigation district records under section 21402 of the Water Code, we also rely on IID's trust responsibility to provide to its beneficiaries information such that they are reasonably apprised of trust matters as codified in the Probate Code. Recent media accounts reflect that one or more water allocation or sign up plans will be submitted to the beneficiaries within a few weeks. In order for the beneficiaries to be able to intelligently exercise their rights, they must have a parity of knowledge with those who are proposing the plan(s), i.e., the drafters and staff at IID. The individual water use and other records requested are a necessary condition precedent to any informed decision to support or participate in any plan proposed by IID.

Enclosed is a draft memorandum that we have made available to our clients and the public. Our clients hold they have a ratable right to the water and all proceeds that derive therefore. As a necessary consequence, beneficiaries have a corresponding right to all information about that right - in the aggregate and by individual ratable portion to be certain that it is being (or will be) administered as required by the Water Code. That, in our view, is why the Water Code is unequivocal that all records of an irrigation district are public -- so that the relevant public (the beneficiaries) has the same access to information as the trustee.

Attached to that memorandum is a letter from IID to the Superior Court that recites IID's core responsibilities. IID itself has affirmatively stated it must provide its beneficiaries with data it requests on a non-discriminatory basis and communicate with its beneficiaries. Our clients are simply trying to hold IID to its own standards. If ever IID was required to live up to its own standards, now is the time.

In the interest of avoiding litigation and its potential for an award of fees and costs for improper withholding of any data, our clients have authorized us to withhold taking further action until the conclusion of the ENE set for April

---

18, 2003 in San Diego. Government Code §§ 6258, 6259. Please note that for purposes of this demand (and any litigation arising from it), we represent beneficiaries other than the individuals presently involved in the federal action.

Sincerely,

Patrick J. Maloney

Encl. 3/27/02 memo with attachment

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THOMAS S. VIRSIK

**MEMORANDUM - draft**

March 27, 2003

Re: Allocation of proceeds of any transfer of water – water right

**Question:** Is it permissible for IID to distribute proceeds of the sale or transfer of conserved water through a sign-up program or to otherwise distribute such funds on a non-ratable basis? Also, can IID distribute funds for or to public purposes, i.e., not to landowners?

**Answer:** No. California Irrigation District law, on its face and as interpreted by the highest courts, specifically provides that each landowner has a proportionate share of the entire res of the water available. Hence if such res is diminished through conservation for transfer, each proportionate share is diminished and compensation must be on such proportionate share. Also, while the Irrigation District Act is premised on a public benefit from an Irrigation District, that public benefit is measured in terms of lands -- not residents.

**Analysis:** QUESTION 1 – proceeds of sale or transfer of water right.

Under well-established California law, an irrigation district holds the water rights in trust for the benefit of the lands. IID has conceded as much in the past. When presenting its position to the United States Supreme Court IID stated in no uncertain terms that it did not – and as a matter of law could not – own the water rights. All it owned and could own was the mere legal title to them. The true ownership was the landowners'; it was a property right of the landowners. The United States Supreme Court adopted IID's position and relied on it when reaching its conclusion that the 160-acre limitation did not apply to the landowners in the IID. Yellen at n. 23.

The court of Appeals makes two interlocking errors (i) in failing to recognize that under California law the rights of the landowners to water delivered by irrigation districts are property rights, not amorphous memberships in a class; and (ii) in failing to recognize that under federal law the rights of the landowners are rights which the Project Act directs the Secretary to serve, and precludes him from taking. This Court's two decrees in Arizona v. California implement that mandate.

The court's conclusion that application of acreage limitations to individual landowners (as distinguished from the District) would not impair present perfected rights is premised on a misunderstanding of the nature of water rights "owned" by irrigation districts in California. Although it is true that the District holds the legal title to the water rights, it holds this title in trust for the landowners, who own the beneficial interest. It is the individual landowner – not the District – who puts the water to beneficial use. Under California law, each individual landowner has a statutory right to a definite proportion of the District's water. And each individual landowner has a statutory right to assign his proportionate share. Moreover, the right to such proportionate share becomes appurtenant to the land upon which the water is used.

IID's Petition for Writ of Certiorari, September 14, 1979, pp. 15-17 (footnotes omitted, emphasis added). Decided as Bryant v. Yellen (1980) 447 US 352. Thus, when speaking of IID's water rights, one must by definition mean the water right IID holds in trust for the landowners, since IID does not have any other water right of its own (other than for power generation, which is not applicable here).

What, then, is the nature of this landowner right? Under the present formulation, derived from the original Wright Act, landowners are entitled to an amount of water proportionate to their payment of assessments to the District.

All water distributed by districts for irrigation purposes shall except when otherwise provided in this article be apportioned ratably to each landowner upon the basis of the ratio which the last assessment against his land for district purposes bears to the whole sum assessed in the district for district purposes.

Water Code § 22250. IID has not collected assessments in many years, so the most likely substitute would be a one share for one-acre basis. That is the RIGHT. That is what would be transferred and for which money may be paid. It has nothing to do with how much water one is using, has used, or even if one's lands have ever been developed. The RIGHT is equated to the assessments (or other proxy of proportion) one has paid.

In contrast, the landowners have the right to transfer or trade this share within the district – no District approval is needed. This is the practical part of the equation – how water is actually used and creates benefits.

Any landowner may assign for use within the district his right to the whole or any portion of the water appropriated to him pursuant to Section 22250.

Water Code § 22251. These two sections, subject to several special sections about discretion that the Board may have in times of shortage, give the landowners the right to trade water among themselves. Bear in mind, whoever, that while a landowner has the right to demand his proportionate share, he does not have the right to demand more than he can use. Nelson v. Anderson-Cottonwood Irr. Dist (1921) 51 Cal.App.92.

The right of the landowner to any quantity of water, however, under the irrigation laws pertaining to a district, is limited always to its beneficial use. In other words, under section 18, a landowner has a right to the beneficial use of that portion of the water available for use in the district calculated according to the ratio provided by section 18, or, if not prepared to use that water himself, he may assign his right to any one who is so prepared. It does not mean, as we construe the section, that any landowner is entitled to have so much water delivered to him and then permit the same to run to waste. Considerable testimony was introduced touching the fitness of the land belonging to the plaintiff for profitable rice culture. We do not deem it necessary to go into this question further than to state that beneficial use of water upon lands, and the possibility of the landowner making a profit upon the crops raised by means of irrigation upon his lands, are not one and the same thing. In other words, the fact that a landowner may not be able to make a profit off of any particular crop does not limit his right to use his proportionate share of the water of the district, to pay for which he has been assessed in making the effort.

Id. at 96 (emphasis added). A landowner may not, however, transfer his extra water outside of the district at his pleasure, based in large part on the common purpose of an irrigation district.

The whole object of the legislation authorizing the organization of irrigation districts is to enable owners of lands susceptible of irrigation from a common source and by the same system of works, to form a district composed of such lands, which district when formed is a public corporation for the sole purpose of obtaining and distributing such water as may be necessary for the irrigation thereof, thus enabling each one to have for his land in the district, the benefit of a common system of irrigation, and bringing about the reclamation of the land of the district from aridity to a condition of suitability for cultivation. It was recognized that without such a common system the individual landowners might be unable to obtain water for the irrigation of their lands, and that a work which would be for the public benefit and general welfare, viz., the reclamation from aridity of large portions of the lands of the state, might never be accomplished if left to individual enterprise. The irrigation district legislation, under which a public municipal corporation may be created for the purpose of furnishing water for the irrigation of the land within the district, has been sustained upon the same ground as has the levee and reclamation district legislation, which is, in effect, that the land included within the limits of such a district, requires, by reason of its situation and condition, the protection or reclamation thus made possible, and that it is for the public welfare that such protection or reclamation should be afforded such land. See In re Madera Irr. Dist., 92 Cal. 296, 311-318, 28 Pac. 272, 675, 14 L. R. A. 755, 27 Am. St. Rep. 106.

The ultimate purpose of a district organized under the irrigation act is the improvement, by irrigation, of the lands within the district. It can, under the law, be organized and exist and acquire property only for such purpose. This we think is so clearly apparent as not to require further discussion here. Such a district holds all property acquired by it solely in trust for such ultimate purpose, and can divert it to no other use. See section 29 of the act of 1897, St. 1897, p. 263, c. 189. It has to do solely with the irrigation of lands within the district, and cannot appropriate water to any other purpose. The right of a landowner of the district to the use of the water acquired by the district is a right to be exercised in consonance with and in furtherance of such ultimate purpose, viz., for the improvement by irrigation of lands within the district, and in no other way. His right is always in subordination to the ultimate purpose of the trust. So far as he proposes to use the water for the irrigation of lands within the district, he is proposing to use it in furtherance of the purpose of the trust, and is entitled to have distributed to him for that purpose, such proportion as his assessment entitles him to. Section 18, Act 1897, St. 1897, p. 259, c. 189. To this extent only can he be held to be the owner of any share or portion of the water, except that, by virtue of the proviso of section 18 (St. 1897, p. 259, c. 189), he may assign the right to the whole or any portion of the share to which he is entitled. This does not mean, however, that he may make an effectual transfer of his share, free from the trust by which it is encumbered. It still remains subject to that trust, and, therefore, can be used only for the irrigation of lands within the district, and the irrigation district has no authority to distribute it for any other purpose. The right of assignment conferred by the act on a landowner is limited by the whole policy of the statute to an assignment for irrigation within the limits of the district. We do not understand the contrary to have been held in Board of Directors v. Tregoe, 88 Cal. 334, 353, 26 Pac. 234.

Jenison v. Redfield (1906) 149 Cal. 500, 503.

The SWRCB approved the transfer of water from IID to San Diego based primarily on section 1011 of the Water Code. That section provides that when one who is entitled to use water conserves, she is entitled to the benefits of the conservation.



(a) When any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts, any cessation or reduction in the use of the appropriated water shall be deemed equivalent to a reasonable beneficial use of water to the extent of the cessation or reduction in use. No forfeiture of the appropriative right to the water conserved shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.

Water Code § 1011(a). The SWRCB was specifically asked and specifically stated in its decision that section 1011 applies to the transfer. Order WRO 2002-0013 REVISED, § 7.3, page 81.

Applying the above to the present situation in the IID, one can conclude the following: Each acre of land has a RIGHT to a proportionate share of water. Each parcel or acre also has the ability to trade or transfer whatever water is not used (or to get additional water from) within the district. No specific parcel or acre, however, has a right to use a specific amount – only a proportion of the total used. When any acres conserve water from its RIGHT under section 1011 – which includes fallowing – and an outside party is willing pay for the conserved water, the moneys must be divided according to the RIGHTS of the land, and not by how much water is being used or not used, the land's history, or even if the land has ever been developed. It is the payment of assessments (or their equivalent) to the IID that is the basis for compensation under the Irrigation District Act. Having a voluntary sign-up is problematic. One can always volunteer to reject the monetary benefits, of course, and let the other lands receive more. But a voluntary system of participation implies that lands can choose to pay for the right to receive water or not. While lands may choose to not receive water or to receive more or less, by the very nature of an irrigation district, lands in the service area are obligated to pay mandatory assessment or charge for the right to water. They may then pay additional charges for water by units, but that does not change the fact that their RIGHT is based on the mandatory assessment or charge. The monetary benefits must be distributed the same way, only in reverse.

Consider the opposite situation. If IID was to receive an additional 100 K of water from a separate source, how much water would each acre get? A proportionate amount, and not one based on crop or farming uses. Transferring conserved water leads to the same result in reverse – a proportionate payment per acre.

Summary: The right to receive water is based on assessments or other mandatory contributions to IID, resulting in all likelihood a one share for one-acre right to receive water. The right to water has nothing to do with land use, crops, or the use of water. Separately, landowners may freely move water and the right to it within the district so as to accomplish their economic goals. Any influx of moneys in exchange for the transfer of conserved water must follow the rights that control its allocation – one share for one acre. That does not affect the landowners' ability to move water around among themselves in order to protect or enhance their economic livelihoods.

QUESTION 2 – proceeds to landowners.

An irrigation district is a public entity, so why shouldn't the proceeds go to the general public? There is the general trust response, that the Water Code is empathic that the water rights are held in trust and so any diminution or change of trust assets belongs to the beneficiaries (landowners) and not to the public. Water Code § 22437.

That present codification of this concept goes back many generations, and the contours of the public nature of an irrigation district was decided early on. The United States Supreme Court found that California law was clear that an irrigation district had a public purpose, but the public to whom the district was responsible were the landowners and not the residents. Fallbrook Irrigation

Dist v. Bradley (1896) 164 US 112. The confusion expressed by some that an irrigation district is supposed to operate for the general public benefit perhaps can be found in an early California case decided before the above case and which relied on a early and abandoned form of the irrigation district act. In re Bonds of Madera Irrigation Dist (1891) 92 Cal 296, 278. The later in time Fallbrook Supreme Court decision made plain the limited public nature of an irrigation district in California.

While the consideration that the work of irrigation must be abandoned if the use of the water may not be held to be or constitute a public use is not to be regarded as conclusive in favor of such use, yet that fact is in this case a most important consideration. Millions of acres of land otherwise cultivable must be left in their present arid and worthless condition, and an effectual obstacle will therefore remain in the way of the advance of a large portion of the state in material wealth and prosperity. To irrigate, and thus to bring into possible cultivation, these large masses of otherwise worthless lands, would seem to be a public purpose, and a matter of public interest, not confined to the landowners, or even to any one section of the state. The fact that the use of the water is limited to the landowner is not, therefore, a fatal objection to this legislation. It is not essential that the entire community, or even any considerable portion thereof, should directly enjoy or participate in an improvement in order to constitute a public use. All landowners in the district have the right to a proportionate share of the water, and no one landowner is favored above his fellow in his right to the use of the water. It is not necessary, in order that the use should be public, that every resident in the district should have the right to the use of the water. The water is not used for general, domestic, or for drinking purposes, and it is plain from the scheme of the act that the water is intended for the use of those who will have occasion to use it on their lands. Nevertheless, if it should so happen that at any particular time the landowner should have more water than he wanted to use on his land, he has the right to sell or assign the surplus or the whole of the water, as he may choose.

The method of the distribution of the water for irrigation purposes provided for in section 11 of the act is criticized as amounting to a distribution to individuals, and not to lands, and on that account it is claimed that the use for irrigation may not be achieved, and therefore the only purpose which could render the use a public one may not exist. This claim we consider not well founded in the language and true construction of the act. It is plain that some method for apportioning the use of the water to the various lands to be benefited must be employed, and what better plan than to say that it shall be apportioned ratably to each landowner upon the basis which the last assessment of such owner for district purposes within the district bears to the whole sum assessed upon the district? Such an apportionment, when followed by the right to assign the whole or any portion of the waters apportioned to the landowner, operates with as near an approach to justice and equality as can be hoped for in such matters, and does not alter the use from a public to a private one. This right of assignment may be availed of also by the owner of any lands which, in his judgment, would not be benefited by irrigation, although the board of supervisors may have otherwise decided. We think it clearly appears that all who, by reason of their ownership of or connection with any portion of the lands, would have occasion to use the water, would, in truth, have the opportunity to use it upon the same terms as all others similarly situated. In this way the use, so far as this point is concerned, is public, because all persons have the right to use the water under the same circumstances. This is sufficient.

Fallbrook Irrigation Dist v. Bradley (1896) 164 US 112, 161-163 (emphasis added). The general public may have some right to the non-water rights such as the distribution system, but not to the water rights.

To the extent that anyone is of the view that when the private water companies were purchased by IID, those companies were in any respect operating for the public benefit, the case of Thayer v. California Development Co. (1912) 164 Cal. 117 states otherwise. (IID was created in 1911, but the private water companies were not all immediately purchased by IID.) In Thayer, a landowner complained that Imperial Water Company No. 1 was improperly not willing to sell water to her land. The court sympathized with the landowner, but found that the California Development Company had not dedicated to public use the water it diverted from the Colorado River. The water was made available only to its shareholders, not to the public.

Summary: The companies serving the Imperial Valley were private and did not dedicate their water diversions to public use. By the time IID was formed in 1911 under the irrigation district laws, it was well established that irrigation districts were responsible to the landowners of the district and not the residents, even though the district was for other purposes public. That relationship was codified in its present state in the Water Code some years later and has not changed. IID, like every other irrigation district in the state, is a trustee of the water rights for its landowners and not to the residents of the district.

#### ADDENDUM:

April 8, 2003

Our further research confirms much of the above. In 1996 before IID became involved in litigation (of its own making) or in state level political posturing (again, of its own making), it clearly and repeatedly told the public that it held the water rights in trust for the landowners in particular. IID went so far as to state to the Imperial County Superior Court that it had a legal duty to listen to and provide its landowners with documents and assistance when requested. In contrast, IID first ignored and still refuses to provide certain IID records to our landowner clients notwithstanding that an irrigation district's records are deemed public. Water Code § 21402. The law has not changed since 1996, only IID's political will to adhere to the law.

Encl: August 5, 1996 letter from President William R. Condit to Presiding Judges of the Imperial County Superior Court.



TELEPHONE (619) 339-0646

# IMPERIAL IRRIGATION DISTRICT

EXECUTIVE OFFICE • 1284 MAIN STREET • P.O. BOX 1809 • EL CENTRO, CALIFORNIA 92244

August 5, 1996

The Honorable Presiding Judges of the  
Superior Court of Imperial County  
James Harmon 1995  
Matias Contreras 1996  
939 Main Street  
El Centro, California 92243

Re: 1995-1996 Grand Jury Final Report

Honorable Judges:

This letter is a formal response to the 1995-1996 Grand Jury Final Report, which was dated June 27, 1996. Although we have not been provided an official copy of the report, we are responding to the version which was published as a supplement to the *Imperial Valley Press* on July 25, 1996. We believe the Grand Jury is certainly free to draw their own conclusions. However, we feel their report was unbalanced because it failed to consider the mission and responsibility of this District. For some unknown reason, the report also did not reflect much of the information IID provided in response to its inquiries.

Imperial Irrigation District is concerned about the content of that report for several reasons. First, the Grand Jury failed to include relevant information which responded to their requests for information. Notably, in response to the Grand Jury's concern about public documents being made available to Western Farms, the Grand Jury's report does not indicate in any place that the attachments to their report are in fact public documents. Any member of the public may make a request under the California Public Records Act for the same or similar documents. With regard to sending these documents via Federal Express, any person may have that service available. They need only provide a mechanism for paying the Federal Express charges, as Western Farms does. The fact that Western Farms exercised its right to obtain public documents does not create the possibility of wrongdoing. However, if IID failed to provide these documents when requested, IID could face liability under the California Public Records Act.

Additionally, the Grand Jury failed to note that discussions between IID and owners of farm land within IID's boundaries are not only common, but essential. In fact, these discussions are necessary in order to ensure IID fulfills its role as a trustee for those landowners with regard to water rights. As noted in *Bryant v. Yellen*, the Supreme Court of the United States acknowledged that IID holds the bare legal title to the water it delivers in trust for the landowners, who hold the equitable title to that land. (*Bryant v. Yellen* (1980) 447 U.S. 352, at 371, fn. 23) It is therefore imperative that IID seek input from those landowners on issues relating to water and water rights. The most notable omission from the Grand Jury's report was information provided to them that such discussions have been, and continue to be, a

The Honorable Presiding Judges of the  
Superior Court of Imperial County  
August 5, 1996  
Page 2

Re: 1995-1996 Grand Jury Final Report

normal part of IID's existence, and that such discussions take place often with owners of farm land within IID's boundaries. Additionally, IID staff has met regularly with groups such as the Water Transfer Advisory Committee, the Imperial Valley Water Users and the Water Conservation Advisory Board. Discussions with interested parties is a prudent and essential trustee role and does not approach any level of impropriety, let alone undue influence.

With regard to IID's selection of Michael Clinton as General Manager of Imperial Irrigation District, the General Manager is a contract position which reports directly to the Board of Directors. Therefore, normal hiring processes are not appropriate for that position. The Board of Directors must have a good working relationship with the General Manager, and that person must also be capable of assisting the Board in setting policy for the District. In selecting a new General Manager in early 1995, the Board followed a very deliberate process including identifying the desired knowledge, skills and experience; using a broad network of relationships to identify likely candidates, including in-house posting of the position; solicitation of resumes and references; reference checks by individual Board members; and about 5 hours of interviews with each of the finalists. To suggest that such a process was outside normal procedures ignores the fact that it would be improper for the selection of the General Manager to be influenced in any way by any person who reports to the General Manager.

The Grand Jury made allegations that IID somehow allows improper use of expense accounts. Whenever non-reimbursable items are charged on an IID credit card, IID ensures rapid payment by the responsible party. IID does not pay for non-reimbursable items. With regard to the specific items discussed multiple times in the *Imperial Valley Press*, IID was fully reimbursed for all such items by the party who incurred the charges.

With regard to the types of conferences attended by IID employees and officials, it is important for directors and staff to attend a wide variety of meetings and conferences. This enables the District to effectively meet with various interest groups and explain District positions to them and build and maintain regional and national coalitions with entities sharing common purposes. This is a process which is vital in order to protect the District's water rights and power resources.

If you have any questions, please do not hesitate to contact me.

Yours truly,



William R. Condit  
President

copies: Board of Directors  
General Manager  
External Affairs Department  
Chief Counsel

FILED

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

*B. Reed*

BY:

DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

IMPERIAL IRRIGATION  
DISTRICT,

v.

THE UNITED STATES OF  
AMERICA, et al.,

Plaintiff,

Defendants.

CASE No. 03-CV-0069 W (JFS)

**ORDER  
REMANDING  
ACTION**

On March 18, 2003 this Court requested supplemental briefing in order to properly fashion a remedy in light of the Federal Defendants' likely failure to properly conduct a Part 417 review. Having reviewed the submitted papers and the applicable law, the Court hereby **REMANDS** this case to the Department of the Interior for a *de novo* Part 417 review.

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108

03cv0069w

1           I.     IMMEDIATE REMAND AND DE NOVO REVIEW IS WARRANTED

2           The Court finds that remand is appropriate for several reasons. First, the  
3     United States Supreme Court, in Arizona v. California, 373 U.S. 546 (1963),  
4     affirmed the Secretary of the Interior's importance in resolving both interstate  
5     and *intrastate* water disputes:

6  
7           These several provisions, even without legislative history, are  
8     persuasive that Congress intended the Secretary of the Interior,  
9     through [her] § 5 contracts, both to carry out the allocation of the  
10    waters of the main Colorado River among the Lower Basin States  
11    and to decide which users within each State would get water.

12          Id. at 580 (emphasis supplied). Second, the Supreme Court has also  
13    explicitly held that state law does not control the Secretary's determination in  
14    apportioning water.<sup>1</sup> See id. at 585-586 ("we hold that the Secretary in choosing  
15    between users within each State and in settling the terms of his contracts is not  
16    bound by the sections to follow state law."); see also Bryant v. Yellen, 447 U.S.  
17    352 (1980) (reaffirming Arizona's holding).

18          Third, relevant decisional authority overwhelmingly suggests that remand  
19    is the appropriate remedy when a federal agency fails to properly follow  
20    administrative procedures. See, e.g., Florida Power and Light Co. v. Lorion,  
21    470 U.S. 729, 743-44 (1985); UOP v. United States, 99 F.3d 344, 351 (9th Cir.  
22    1996). Accordingly, this Court finds that any remedy other than remand for *de*  
23    *novi* review would violate clearly established Supreme Court and Ninth Circuit  
24    precedent.<sup>2</sup>

25          <sup>1</sup> Ironically, IID strenuously argued this very point in its Imperial Irrigation  
26    District v. State Water Resources Control Board Petition for Writ of Certiorari to the  
27    United States Supreme Court, as well as its Reply Brief. (Masouredis Decl., Exs. 1 and  
28    2 attached thereto.)

29          <sup>2</sup> Moreover, the Court notes that Plaintiff's proposed special master, the  
30    State Water Resources Control Board ("SWRCB") is precluded from refusing to

1           **II. PLAINTIFF'S CONCERNS ARE UNSUBSTANTIATED AND**  
2           **PREMATURE**

3           Plaintiff devotes considerable briefing to the suggestion that any Part 417  
4 *de novo* review will be unfair in light of the parties' rancorous litigation to date.  
5 However, the Administrative Procedures Act, 5 U.S.C. § 702 *et seq.* forecloses  
6 any unfairness that may arise. The Court reminds the parties that one of the  
7 Court's bases for preliminary injunction relief was the Federal Defendants'  
8 failure to comply with Part 417's required procedures. (Tr. at 130). The APA's  
9 remedy for this type of violation is clear; immediate remand is warranted. See  
10 5 U.S.C. § 706(2)(D) ("The reviewing court shall - (2) hold unlawful and set  
11 aside agency action, findings, and conclusions found to be - (D) without  
12 observance of procedure required by law."). Should the Federal Defendants fail  
13 to *meticulously* follow Part 417's prescribed procedures in determining IID's  
14 reasonable beneficial use, Plaintiff may again elect to bring the matter before  
15 a district court for judicial review.

16           **III. THE CURRENT BOND IS MORE THAN ADEQUATE GIVEN**  
17           **PLAINTIFF'S LIKELIHOOD OF SUCCESS**

18           The final issue before the Court is whether the current bond amount is  
19 adequate. As the parties are well aware, the Court set a \$250,000 bond. (Tr.  
20 at 135.) District courts are granted wide discretion in determining a security  
21 bond's amount. See Fed. R. Civ. Proc. 65(c); see also Walczak v. EPL Prolong,  
22 198 F.3d 725, 733 (9th Cir. 1999). After considering the evidence presented  
23 both in the briefs and at the hearing, as well as Plaintiff's significant likelihood  
24 of success on the merits, the Court finds the \$250,000 bond adequate.

25       //

26           \_\_\_\_\_  
27       enforce a state statute on federal preemption grounds unless an appellate court has  
28       first made such a determination. See Cal. Const. art. III, § 3.5. Notwithstanding the  
      Court's other bases for remand, the Court cannot, and will not, appoint a special  
      master statutorily barred from following the Supremacy Clause.

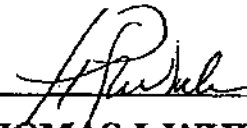


1           **IV. CONCLUSION AND ORDER**

2           In light of the foregoing, the Court **REMANDS** the entire matter to the  
3 Department of the Interior for *de novo* Part 417 proceedings consistent with  
4 this Court's March 18, 2003 order. All parties are **ORDERED** to complete  
5 such *de novo* Part 417 review as detailed in the Federal Defendants' April 1,  
6 2003 supplemental brief, which the Court incorporates herein by reference.  
7 The Court **VACATES** all prior Department of Interior findings and conclusions  
8 previously rendered during its purported 2002 Part 417 review. The Court  
9 **DENIES** without prejudice all remaining motions as moot. Finally, the Court  
10 **STAYS** this litigation in its entirety pending *de novo* Part 417 review  
11 completion.

12  
13           **IT IS SO ORDERED.**

14  
15           **DATE: April 16, 2003**

  
\_\_\_\_\_  
**HON. THOMAS J. WHELAN**  
United States District Court  
Southern District of California

16  
17  
18  
19           **CC: ALL PARTIES**  
20  
21  
22  
23  
24  
25  
26  
27  
28

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THOMAS S. VIRSIK

Via overnight delivery  
April 23, 2003

John P. Carter  
Horton, Knox, Carter & Foote

Re: Letter of April 15, 2003  
Public Records Act request

Dear Mr. Carter:

Again, we have no response to our clients' requests for public information. Since our last letter on that issue, the District Court has issued its remand order, the IID and the Farm Bureau have proposed competing plans for water management, and the information sought now takes on additional importance.

Enclosed please find drafts of the moving papers of an action to enforce our clients' rights. Please note that while local practice favors a noticed motion, due to the delay of IID and the action of the federal court, we have need to use the faster procedure. Presumably, IID itself has every incentive to use the faster procedure so that if the information sought is not public, it would benefit from that decision before the fact gathering part of the federal Part 417 process concludes. While the enclosed are designated drafts, barring significant events outside of our control, we expect to make no changes to the papers to be filed. Since we will be using the faster procedure, we are providing you notice substantially greater than the local or state rules require so that the matter may be resolved as quickly as possible once filed. Our suggestion is to stipulate to a briefing schedule even before filing, e.g., IID files a response within seven days and we reply four days later and the court rules on the papers (or sets a hearing if it should have need).

In order for IID to consider both the procedure proposed and the underlying merits, we will withhold filing until after Monday, April 28, 2003. If we do not have agreement by then, we will schedule the ex parte hearing and provide you with the requisite notice. In that way, you will have had a full week of notice and time in which to prepare.

I plan to be in the Imperial Valley a good part of this Friday if you wish to discuss the within matters. As you may be aware, I will be at a public presentation at the Farm Bureau most of that day.

Sincerely,

Thomas Virsik

Encl. DRAFT Petition, Writ, Order, and P&A

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FRANK A. OSWALT, III, A.P.C.  
DENNIS H. MORITA  
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April 28, 2003

Thomas S. Virsik  
Law Office of Patrick J. Maloney  
2425 Webb Avenue, Suite 100  
Alameda Island, California 94501-2922

Via: Facsimile  
(510) 521-4623

Re: Letter to John P. Carter of April 23, 2003  
Public Records Act Request

Dear Mr. Virsik:

We are in receipt of your letter referenced above, as well as the draft petition for writ of mandate and supporting papers. I have reviewed your moving papers and have consulted with the appropriate officials at the Imperial Irrigation District (the District) that have been handling your Public Records Act request.

I am confused about your reliance on the New York Times case. It is our understanding that Susie Carrillo of the District's Public Information Office responded to your letter of November 5, 2002 wherein she explained that the District's position with respect to the Water Availability Statements and Water Charges Statements is based on CAL. GOVT. CODE § 6254.16. Perhaps you never received Ms. Carrillo's letter. Enclosed is a copy for your reference.

As stated in Ms. Carrillo's letter, CAL. GOVT. CODE § 6254.16 was enacted after the New York Times case. This morning I consulted the legislative history on CAL. GOVT. CODE § 6254.16, which confirms that it was enacted in response to the decision in New York Times. It is the District's position that the New York Times case no longer controls. The documents that are the subject of your petition for a writ of mandate fall squarely within the exemption created by section 6254.16. I respectfully submit that in light of this authority you have very little chance of prevailing on the petition.

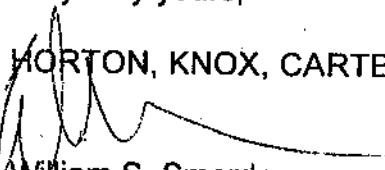
We believe that the District has already provided all of the information that it can provide with respect to Water Availability Charges and Water Charges. However we would be willing to discuss your request if you feel there is a way to amend it in such away that the District can comply without revealing information that is exempt from disclosure under Section 6254.16.

Thomas S. Virsik  
April 28, 2003  
Page 2

I look forward to hearing from you on this issue. If you decide to press forward with your petition for a writ of mandate, please notify this office of the date of the ex parte hearing as soon as possible so that we will have a reasonable opportunity to file an opposition on behalf of the District.

Very truly yours,

HORTON, KNOX, CARTER & FOOTE



William S. Smerdon

WSS/ph  
encl.

November 13, 2002

Patrick J. Maloney  
Law Offices of Patrick J. Maloney  
2425 Webb Avenue, Ste. 100  
Alameda Island, CA 94501-2922

Dear Mr. Maloney:

Thank you for your letter of November 5, 2002, which we received on November 12, 2002. For clarification on the timeframe listed in your letter, our office did not receive a faxed copy prior to receiving the original copy.

On the issue of the records of water customers, I have checked with our legal counsel on the Water Code § 21402 you cited (records of irrigation district are public) and their response is that Water Code Section 6254.16 provides, in relevant part, "nothing in this chapter shall be construed to require the disclosure of the name, credit history, utility usage data, home address, or telephone number of utility customers of local agencies...". While this section provides circumstances in which such records must be made available, we do not believe they apply to your request. Legal believes that 6254.16, enacted after the NYT case, prevails over the general reference at Water Code Section 21402.

I hope this satisfies your request for clarification. If you have any questions, please free to call our office at 760-482-9602.

Sincerely,

SUSIE CARRILLO  
Administrative Assistant  
Public Information Department

Encls.  
cc: GM  
LE  
Board  
Water  
RPM  
File

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THOMAS S. VIRSIK

Via Fax

May 2, 2003

William Smerdon  
Horton, Knox, Carter & Foote

Re: Public Records Act request

Dear Mr. Smerdon:

I am in receipt of your April 28, 2003 letter. No, I had not previously received the November 13, 2002 IID letter citing Water Code section (sic) 6245.16. Had it been referenced or provided earlier (say, to the unanswered April 15 letter), our clients could have avoided this additional round of letters.

I am unaware of any authority applying section 6254.16 to records designated public under laws other than the CPRA, which is our client's assertion. Water Code § 21402. That is why, for example, in the draft P&A a parenthetical follows the New York Times case to emphasize the special rights of beneficiaries in an irrigation district. Indeed, section 6254.16 is itself limited to "this chapter," meaning the CPRA. While the procedure under which our clients will proceed is the CPRA, they are relying on rights provided to them under law separate from the CPRA, e.g. the Probate and Water Code. If section 6254.16 was as broad as your client claims, it would not contain the limitation language.

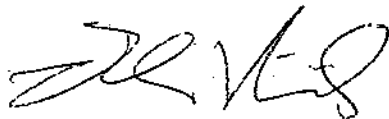
So that there is no confusion, our clients are not concerned with credit histories or home telephone numbers. Their concerns are with records reflecting details of IID's making water available. As best as can be gathered from the original resolutions imposing the subject charges,

municipal and other private persons receive water through an intermediary anyway (e.g., a city), so it seems there would be no such individualized information over which to assert any confidence.

If your client is aware of authority that applies section 6254.16 to (1) irrigation districts and/or (2) to rights created by laws other than the CPRA, please immediately advise. While the moving papers will be changed to reflect the previously unknown letter and this round of correspondence, our clients continue to assert that they are entitled to the records of an irrigation district.

Our clients are pleased, however, that IID does not dispute their assertion that because of the pending part 417 proceeding, determining the nature of the records sought must be expedited. We can therefore at a minimum phrase any inquiry to the Court as proceeding solely on the application of section 6254.16 to an irrigation district's records of water use and charges and thereby expedite resolution. If that does not reflect your clients' view, please immediately advise so that our clients may take action. Please advise by Tuesday, May 6, 2003 as to your clients' views.

Sincerely,



Thomas Virsik



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THOMAS S. VIRSIK

Via Fax

May 9, 2003

William Smerdon  
Horton, Knox, Carter & Foote

Re: Public Records Act request

Dear Mr. Smerdon:

I have received no response to our letter of May 2, 2003. As you have not answered, I must assume that your client agrees that its sole defense to divulging the records sought is Government Code section 6254.16 and that this matter can be expedited (subject to the Court's scheduling, of course). Thus, assuming our clients prevail, even if the resolution will not occur before the end of the fact gathering portion of the pending Part 417 proceeding, at least it will happen during the review period and our clients may be able – with IID's cooperation – make a case to the DOI that the evidence would have been forthcoming but for IID's mistaken legal position. If on the other hand our clients do not prevail, IID will not be harmed in its 417 position(s).

I expect to make the filings early next week, with copies served on you at your office. As soon as I have proposed Court dates I (or other counsel) will coordinate with your office.

Sincerely,



Thomas Virsik

**EXHIBIT 13**

1 Lowell F. Sutherland, No. 037721  
2 SUTHERLAND & GERBER  
3 1443 W Main St  
4 El Centro, CA 92243  
5 Phone: (760) 353-4444  
6 FAX: (760) 352-2533

7 Patrick J. Maloney, No. 042963  
8 Thomas S. Virsik, No. 188945  
9 LAW OFFICES OF PATRICK J. MALONEY  
10 2425 Webb Avenue, Suite 100  
11 Alameda, CA 94501-2922  
12 Telephone: (510) 521-4575  
13 State Bar No.: 042963  
14 Attorneys for petitioners JOHN JORDAN  
15 and EMIL SCHAFFNER

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF IMPERIAL**

18 JOHN JORDAN  
19 and EMIL SCHAFFNER

20 Petitioners

21 vs.

22 IMPERIAL IRRIGATION DISTRICT  
23 and RON HULL, Manager of Public  
24 Affairs

25 Respondents.

Case No. M-0105

MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF PETITION FOR  
WRIT OF MANDATE

Date:  
Time:  
Department  
Judge

26 Respondent IID (and Ron Hull) must be compelled to produce its records under the  
27 Public Records Act because (1) its water records are public under the Water Code and (2)  
28 IID has waived any objections thereto. Petitioners bring this matter by way of a  
mandamus proceeding, as authorized by law and to expedite matters due to the pending  
federal administrative action. Government Code § 6258, see Exhibit 9. The following  
records are sought:

- Electronic copies of all Water Availability Statements for Fiscal Years 1990-2002
- Electronic copies of all Water Charges for Fiscal Years 1990-2002
- Paper copies of all Water Availability Statements for Fiscal Years 1990-2002
- Paper copies of all Water Charges for Fiscal Years 1990-2002

1 I. A WRIT OF MANDAMUS IS THE APPROPRIATE REMEDY

2 Petitioners' request for public records was made under the procedures detailed by  
3 the California Public Records Act. Govt. Code 6250 et seq. Government Code section  
4 6258 provides that any person may institute proceedings for a writ of mandate to enforce  
5 his or her right to inspect or to receive a copy of any public record or class of public  
6 records under the Act. Code of Civil Procedure 1085 provides, "A writ of mandate may  
7 be issued by any court . . . to compel the performance of an act which the law specially  
8 enjoins . . . ." Also, Govt. Code 6259(a) provides, in pertinent part, "Whenever it is made  
9 to appear by verified petition to the superior court of the county where the records or  
10 some part thereof are situated that certain public records are being improperly withheld  
11 from a member of the public, the court shall order the officer or person charged with  
12 withholding the records to disclose the public record or show cause why he or she should  
13 not do so."

14 II. GENERAL PRESUMPTION FAVORS DISCLOSURE

15 The heart of the Public Records Act is Govt. Code 6253. Section 6253(a) provides  
16 that public records shall be open for public inspection during the office hours of the  
17 public agency. That subsection also provides that, "any reasonably segregable portion of  
18 a record shall be available for inspection by any person requesting the record after  
19 deletion of the portions that are exempted by law." Subsection (b) provides, in substance,  
20 that upon written request for records reasonably described, identifiable records (that are  
21 not exempt from disclosure by express provisions of law) shall be made available to the  
22 requesting party upon payment of the appropriate fees. And subsection (c) provides that  
23 a public agency, upon a request for a copy of records, shall, within 10 days from receipt  
24 of the request, determine whether the request seeks copies of disclosable public records in  
25 the possession of the agency and shall promptly notify the person making the request of  
26 the determination and the reasons therefor. In unusual circumstances, the 10-day time  
27 limit may be extended for an additional 14 days by written notice by the agency to the  
28 person making the request.

1 Furthermore, Govt. Code 6253.1 requires a public agency to aid an individual in  
2 making "a focused and effective request that reasonably describes an identifiable record"  
3 by assisting the individual in identifying records and information that may be responsive  
4 to the request. Govt. Code 6252(c) defines the terms "public record" so broadly as to  
5 include virtually every writing prepared, owned, used or retained by public employees in  
6 furtherance of his or her official duties. Govt. Code 6254 provides for enumerated  
7 categories of documents exempt from disclosure, none of which respondent has asserted.  
8 In this regard, it must be mentioned that California courts narrowly construe the  
9 disclosure exemptions found in Govt. Code 6254. Braun v. City of Taft (1984) 154  
10 Cal.App.3d 332, 342.

11 Govt. Code 6255 contains a "catchall" provision for documents that do not fall  
12 within one of the exemptions enumerated in section 6254, but which, nevertheless, be  
13 exempted from public disclosure. Section 6255 provides that a public agency may  
14 justify withholding any record "by demonstrating . . . that on the facts of the particular  
15 case the public interest served by not disclosing the record clearly outweighs the public  
16 interest served by disclosure of the record." "The burden of proof is on the proponent of  
17 nondisclosure, who must demonstrate a 'clear overbalance' on the side of confidentiality."  
18 California State University, Fresno Association (2001) 90 Cal.App.4th 810, 831.

19 Lastly, Govt. Code 6259 provides, in substance, that whenever it is made to appear  
20 that public records are being improperly withheld, the court shall order the officer or  
21 person charged with withholding the records to disclose the public record or show cause  
22 why he or she should not do so. The court shall decide the case after examining the  
23 record in camera, if permitted by subdivision (b) of Evidence Code 915, papers filed by  
24 the parties and any oral argument and additional evidence as the court may allow.

### 25 III. STATUTE DESIGNATES RECORDS SOUGHT AS PUBLIC

26 By necessity, IID is first and foremost an irrigation district under the Water Code.  
27 Water Code §§ 20510 et seq. While it also sells electrical power, that "other side" of  
28 IID in no way changes its rights and responsibilities as an irrigation district. Water Code  
P&A IN SUPPORT OF PETITION FOR WRIT OF MANDATE

1 §§ 22115 - 22117.

2 The materials sought – detailed agricultural water records from IID’s service area –  
3 are designated public by statute. “All records of the district shall be open to public  
4 inspection during the hours when the office of the district is open to the public.” Water  
5 Code § 21402. Whatever public policy or political arguments IID may proffer about  
6 releasing detailed water information was resolved in the public’s favor by the legislature  
7 decades ago; section 21402 was codified in 1943. The Public Records Act explicitly  
8 contemplates that other law can provide greater access than the minimum requirement of  
9 the Act. Govt. Code §§ 6253(e); 6254 (savings clause after subsection z). After  
10 numerous attempts to determine on what basis IID seems to ignore its duty to disclose,  
11 IID has proffered a single defense -- section 6254.16 of the Government Code. That  
12 present position is to be contrasted with the position IID took under a different political  
13 climate in 1996, wherein it advocated to this Court that it was bound to timely provide its  
14 records to the relevant public (its beneficiaries). Exhibit 8 (1996 letter to Superior Court).

15 Any notion that IID can assert an abstract “privacy” interest in its records is not  
16 borne out by applicable authority. New York Times v. Superior Court (1990) 218  
17 Cal.App.3<sup>rd</sup> 1579 (water district – not irrigation district subject to section 24102 -- must  
18 release its list including names and addresses of excessive water users). IID’s sole  
19 defense, section 6254.16, was created after the above New York Times decision.  
20 Legislative history reflects that its authors were concerned with public access to personal  
21 information in the wake of several prominent stalking cases in which an individual  
22 obtained personal information about an object of obsession from public sources (e.g.,  
23 DMV) and then used that information to find and harm the other person. That concern is  
24 not relevant here. What is relevant is that the provision is itself specifically limited to  
25 disclosures created by the Public Records Act, and does not apply to disclosures created  
26 under other law. “Nothing in this chapter shall be construed to require the disclosure of  
27 the name, credit history, utility usage data, home address, or telephone number of utility  
28 customers of local agencies . . . ” Govt. Code § 6254.16 (emphasis supplied). IID was

1 asked in the May 2, 2003 letter to furnish any authority for the proposition that the section  
2 applies to disclosure created apart from the Public Records Act, and it has been unable to  
3 do so. Exhibit 12.

4 Even if *arguendo* the section was applicable here, the specific disclosure  
5 requirement of Water Code section 21402 would control, as it is a narrow and specific  
6 obligation of a specific entity, an irrigation district.

7 [I]t is a fundamental tenet of statutory construction that when a conflict  
8 appears, the more specific provisions control. Unless repealed expressly or  
9 by necessary implication, a special statute dealing with a particular subject  
10 constitutes an exception so as to control and take precedence over a  
11 conflicting general statute on the same subject. This is the case regardless of  
12 whether the special provision is enacted before or after the general one, and  
13 notwithstanding that the general provision, standing alone, would be broad  
14 enough to include the subject to which the more particular one relates.

15 Turlock Irrigation District v. Hetrick (1999) 71 Cal.App.4<sup>th</sup> 948, 953 (internal quotes and  
16 citations omitted) (comparing specific powers and obligations found in irrigation district  
17 act with more general powers found elsewhere).

18 Strong constitutional public policy favors disclosure as well. California's  
19 constitution as amended in the early 20<sup>th</sup> century provides that all of the water resources  
20 be put to reasonable and beneficial use and prohibits waste and/or unreasonable methods  
21 of use of water. Cal. Const. Art. 10, § 2. That section concludes by stating that the  
22 provision is self-executing and that the legislature may enact other laws in furtherance of  
23 this policy. Section 21402 of the Water Code is – at a minimum – consistent with that  
24 policy, for if the records of an irrigation district were not public, the public would have no  
25 practical way to determine for itself if water was being used reasonably in an irrigation  
26 district. To the extent IID asserts that the legislature meant to repeal section 21402 of the  
27 Water Code when it enacted section 6254.16 of the Government Code – of which there is  
28 no evidence or even a hint of evidence – such an interpretation calls into question the  
constitutionality of section 6254.16 as applied. A more restrained and narrow reading of  
section 6254.16 raises no constitutional difficulties.

1 Furthermore, a public entity may not offer certain information, such as a summary  
2 of all water charges and water use, and demand that the information be accepted at face  
3 value. Rather, "the public interest demands the ability to verify." Connell v. Superior  
4 Court (1997) 56 Cal.App.4th 601, 617. Therefore, respondents cannot discharge their  
5 duty to disclose by offering a spreadsheet stating in gross the total amounts per year.  
6 Rather, petitioners are entitled to obtain other documents which will provide the  
7 components of information upon which IID relies in creating its summary.

#### 8 IV. IID HAS WAIVED ITS RIGHT TO OBJECT

9 The Public Records Act provides specific means by which an agency may object to  
10 the production of records. Government Code §§ 6253 and 6255 (objections within 10  
11 days, must be in writing). By any interpretation of the calendar, IID utterly failed to  
12 timely assert objections or to ask for additional time in which to make determinations  
13 about its records. IID did not respond until October 10, 2002, some 21 days after the  
14 request was sent. Exhibit 3.

#### 15 V. PUBLIC IN NEED OF RECORDS

16 While the Public Record Act does not require petitioners to state any reason or  
17 justification for the records, equity in the instant case provides additional reason to not  
18 only order the production, but to do so at the earliest possible moment. Exhibit 9. The  
19 federal court has ordered that the IID and those affected by the delivery of Colorado River  
20 water in the IID service area (such as petitioners) engage in an administrative proceeding  
21 to decide how much Colorado River water is to be delivered to this area that will  
22 commence on May 1 and conclude in October 2003. In the lingo of that court, the  
23 administrative remand is referred to as a "Part 417" proceeding. Under that vigorous  
24 schedule, petitioners have need of the underlying water use information in IID's  
25 possession within 30-45 days as the factual portion of the record closes May 29. The  
26 actions of the sister court make the need for detailed water use data paramount in an  
27 incredibly short time frame. For this additional reason, petitioners have chosen this writ  
28 procedure and pray that this Court order IID to provide the material requested

